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EUROPEAN UNIVERSITY INSTITUTE
Department of Political and Social Sciences

**The Fragility of Liberty.
A Reconstruction of Republican Citizenship**

by

Per Mouritsen

Thesis submitted for assessment with a view
to obtaining the Degree of Doctor of the
European University Institute

Florence
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Florence
January 2001

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FOREWORD

This thesis is about the republican tradition of political thought. It is a tradition which has been, or that is my contention, misrepresented by its critics as well as by a great many professed friends, few of whom have appreciated the most important republican argument. This constitutive argument, the meaning, origins, dimensions, and theoretical relevance of which is the more particular topic of the pages that follow, is captured, I believe, by the expression *the fragility of liberty*. In the clear light of hindsight, three events were central to my personal context of discovery of the problem of misunderstood republicanism.

The first event was a book. On board a North Sea ferry boat, in the late summer of 1989, I first read Hannah Arendt's *The Human Condition*. The book left me with the intensely ambiguous feeling of having learned something profoundly important about the precarious nature of liberty, political institutions, and public space in the modern world; but also, on the other hand, that Arendt, like many lesser writers on 'political participation' suffered from what one Arendt commentator called excessive Hellas nostalgia (I later discovered, in light of Arendt's analysis of totalitarianism, that her position was more complicated, and that the commentator was wrong).

The second event was world history: The revolutions in Eastern Europe in the autumn of the same year. If Arendt was occasionally employed by political romantics who longed for a community of political action, in the name of whose intrinsic worth liberal societies ought to be transformed, the 'rectifying' revolutions (as Habermas called them) in Berlin, Prague, and Warsaw placed matters in their proper perspective. At any rate they did for me. As my friends and I, safe in our Warwick University campus flat, watched the Wall crumble on ITV, everybody wanted to catch the first plane to Berlin, just to share the joy of action, perhaps even to help pick up that popular power which, as Arendt put it, was 'lying in the street'. We also saw, however, that the supreme pathos of this revolutionary politics derived exclusively from its instrumental object which, in the new Europe about to take shape, was the most important object of all. I could not go, among other things because I had a dissertation to write. On Arendt, of course.

The third event was my discovery, initially through Quentin Skinner's work on the Renaissance, that civic political theory with an instrumental 'point' was important also to historical republicans like Machiavelli, and that there might be a reason to investigate the tradition more thoroughly to see if others shared Machiavelli's combination of proto-liberal conceptions of citizenship as private, 'negative' liberty with a call on citizens, in the name of this value, to be virtuous and active. As it turned out, all the authors that I came across, even including Aristotle, the alleged founder of politics for its own sake, were 'republicans' in the above sense, although they were so in interestingly different ways.

During my work on the thesis, I have accumulated many debts. At the European University Institute in Florence, I have benefited from comments and discussions, of republicanism and related topics, with Danny Burns, Ben Crumb, Adrian Favell, Vladimir Gradev, Attracta Ingram, Celia Lessa, Iver Neumann, Veronique Nunos-Dardez, Axel Petersen, and Marlene Wind. At the Department of Political Science in Aarhus, my gratitude goes to Hanne Marlene Dahl, Gorm Harste, Torben Jensen, Knud Erik Jørgensen, Kristian Kindtler, Kasper Lippert-Rasmussen, Jørgen Loftager, Søren Flinch Midtgaard, members of the Comparative Politics division, and students who participated in my seminar on republicanism. Søren Flinch Midtgaard in particular helped me sharpen my argument at a late stage. Valuable particular points were raised by audiences in Florence, at the political science departments in Aarhus and Copenhagen, at the European Studies Program in Aarhus, at a session of the Nordic Summer University, and at conferences of the Nordic Political Science Association (NOPSA) and the European Consortium of Political Research (ECPR), where sections of my work was presented. Four people helped me during the last stages of preparing the manuscript: Karin Kristensen and Rikke Sommer assisted me with the bibliography. Annette Andersen, expert secretary at my department in Aarhus, processed numerous corrected drafts with infallible precision and speed. Last revisions were competently carried out by Lone Winther Mathias. I also must thank my present employer the Department of Political Science at the University of Copenhagen for generously facilitating my final stay at the EUI in Florence in the spring term 2000, and of course the latter institution for extending the use of its facilities even to the slowest of 'researchers finishing a thesis'.

Two individuals deserve special thanks. My friend Jørgen Poulsen has encouraged and supported my work for a long time. Over the years he has read and criticised much of what I have written, often raising agonising points. His personal ambition to combine political theory, history of ideas, and empirical enquiry, has been a constant inspiration for me as for many others. Steven Lukes, apart from doing what he was paid to do as my assigned supervisor in the European University Institute Ph.D. program, guiding, pushing, and criticising in his characteristically pointed manner, deserves thanks simply for believing in me during a long period of time where I did not do so myself.

Steven Lukes also gave me two valuable pieces of advice. One, which I followed, was to go easy on Hannah Arendt. Another was not to get side-tracked on a history of ideas trail. But in order to be able to say anything remotely interesting about what republicanism is and could be as a species of political theory, I soon found that I had to know much more of what it was. This soon became a main concern. To start this project (I hardly finished it) took an extra few years. Maybe I should have taken this piece of advice as well.

A note of explanation about this long overdue thesis (I entered the Ph.D. programme at the EUI in September 1992). Apart from the usual trivial factors – the

need to take up full time university teaching when stipends ran out – there were other reasons. Apart from my underdeveloped ability to set myself clearly delineated, limited, and realistic tasks and to get things done, the thesis also underwent a series of shifts of emphasis. The reconstruction of ‘the history of ideas of republicanism’, as broad a subject as it may well seem, is only a part, if a very important part, of the ensuing results. Other parts, some of which were really still work in progress, were eventually left out of what was threatening to become a very long thesis.

One of these parts was a long chapter which surveyed the liberal-communitarian debate with a view to establishing first, that it was ‘won’ on a number of dimensions of controversy by the liberals, and second, that the republican tradition may be employed to pose a *different* set of challenges to which Rawlsian liberalism in particular is more vulnerable. The point of the chapter was to demonstrate the relevance of turning one’s attention towards republicanism as a distinct set of arguments, before setting of to do it. The Introduction contains a brief summary of these reasons.

Another part – or several parts – on which also much time was spent made up the elements of what I tentatively called ‘a republican research program’. In the thesis I make a point of showing that the republican tradition was to a high extent defined by its distinct causal accounts of the empirical conditions of maintaining *libertas*, and that historically its persuasiveness was very much a matter of whether people believed it to be demonstrated that these were in fact the conditions. The decision of turning to republican arguments in contemporary political theory, I also argue, is similarly linked to our considerations about contemporary conditions for maintaining common liberty, or ‘a well-ordered and just society’, as Rawls calls it – considerations which some parts of liberal political theory have made a point of abstracting from. Thus each of these parts were attempts to explore, in a more or less sustained fashion, the empirical aspects of various elements of the constitutive republican argument about civic virtue as a precondition for the enjoyment of liberty and citizenship status.

One section concerned the historical genesis of Western citizenship and the question of whether and how it was ‘won’ or ‘given’. Another section was a critical review of the debate on Robert Putnam’s book, *Making Democracy Work*, which seemed to highlight aspects of the connection between civic activity and the quality of *civic space* (trust, tolerance) – although I found that the origins, sites, and phenomenological nature of Putnam’s *civility* was not so convincing after all. A third section was concerned with the reconstruction of the dimensions of value pluralism and ‘empirical contestation’ in two contemporary contexts of constitutional deliberation, that of ‘multicultural’ extensions of citizenship, and that of European Union controversy over formats of sovereignty, representation, and democracy. A fourth section concerned the contemporary relevance of (generating) *patriotic* soli-

darity. I sought to discuss contemporary functional equivalents of activities generating solidarity in the context of advanced welfare states. I also discussed the parameters and conditions of what I have termed practices of 'reconstructive patriotism' which, I argue, has become a critical potential in contemporary discourses on 'national identity', but for which the notion of 'constitutional patriotism' does not suffice.

Some of these left-out parts have been developed for separate publication or are in the process of being so.¹ Others will be soon. I also hope to include them, in a more developed form, along with the material of the thesis, a deeper methodological discussion of republican historiography and the practice of 'history of ideas', and above all a much more sustained positive argument about republican themes in the context of contemporary political theory, in a bid for the ('big') Danish doctorate at some point in the, hopefully, not too distant future.

My thesis makes a history of ideas-based case for political activity. Ironically, personal shyness has always prevented me from having much of a taste for public appearance myself. Writing about civic action has been more intrinsically rewarding than I tend to imagine most forms of political activity could ever be. Maybe I could find time now to do my share too, writing the occasional letter to the local editor or taking my turn on the parents' committee of my children's school. At any rate, I shall certainly find more time for what also to the republicans was the point of it all: things like the peace and comfort of a private life, love and affection in the company of friends and dear ones. My greatest debts are to my patiently waiting family, to my wife Anette, and to Mathias, Daniel, and Miriam.

Florence, June 2000

1. Mouritsen (1999a; 1999b; 1999c; 2000a; 2000b, 2000c; forthcoming).

CHAPTER 1: INTRODUCTION

I

Historical memory is often short, but we all recall the great experience of the popular revolutions in East Central Europe. The collapse of state-socialism had tremendous repercussions all over the world, and a large number of undemocratic regimes, no longer sheltered by East-West bipolarity, have crumbled. Francis Fukuyama made a name for himself by proclaiming the approaching end of history as the victory of liberal-democratic political orders. There is, Fukuyama boldly stated, "a fundamental process at work that dictates a common evolutionary pattern for *all* human societies - in short something like a Universal History of mankind in the direction of liberal democracy". Fukuyama was making the broad point that the *idea* of liberal democracy, or some recognisably liberal version of the conceptual pair of liberty and equality, was triumphant in the sense that it was no longer rational to imagine *better* worlds that were not liberal, that attempts to do so were local leftovers, and that, give and take setbacks and delays, governments across the globe would find it increasingly difficult to secure a minimal degree of popular legitimacy, save by taking decisive steps towards conforming to liberal ideas.²

It would be wonderful, at the turn of the millennium, to be finally on the Hegelian glory path. I do not think we are, or that such delightful prospects could ever be inevitable. My thesis is about why Fukuyama's expectations, and many other kinds of excessive optimism on behalf of liberalism and liberal societies may be misguided. It does not proclaim a fatalism of the kind which states that "democracy may ... have been a historical accident, a brief parenthesis that is closing before our eyes".³ But the following pages will be guided by intuitions like those expressed in Michael Ignatieff's fear that liberal democracy runs "deeply against the human grain, and is only achieved and sustained by the most unremitting struggle". The struggle may be, as Ignatieff thinks it is, "against human nature". Or it may be against the follies of religious or nationalist fanaticism, the thirst for power and wealth of a few, or the excessive zeal of political romanticists bent on projecting their noble intentions onto politics, and possessing the means to do so.⁴

2. Fukuyama (1992:48).

3. Jean François Revel, *How Democracies Perish* (New York: Harper and Row, 1983), p.3, cited in Fukuyama (1992:8).

4. Ignatieff (1993:189).

1. Precarious Liberal Orders

Liberal orders I take to be societies where all individuals enjoy and are able to use effectively a reasonable set of legally guaranteed and politically protected civil, political, and social rights, enabling them in turn to live private lives of enough material comfort to pursue their own projects in their own way without fear or apprehension. Such orders are *not* to be taken for granted, or to be passively waited for, to be delivered by the Spirit of History, whatever her disguise. The enjoyment of these world-historically great human goods is a precarious achievement. This becomes obvious for anyone pausing for the briefest moment to consider a number of post-cold war developments.

First, the rights of social citizenship introduced by progressive governments to check the unequalising logic of the capitalist market, have recently come under fire.⁵ Always more insecure than civil and political rights and never quite realised at all in the World's biggest democracy, the sanctity of an institutionally secured material base - decent housing, health care, education, and an assured basic income - is no longer obvious. While rumours of the dismantling of the welfare state have been exaggerated,⁶ services and eligibility criteria have been tightened, and the plight of some groups with poor organisation and weak media presence - the permanently ill, the mentally disabled, many old people - remains unenviable in many countries.

Particularly salient is the structural segregation of a heterogeneous new underclass without the skills or cultural resources, or perhaps the skin colour, to secure a stable position in a specialised and competitive labour market.⁷ The possibility of an effectively autonomous individual life in such a situation may be threatened even where the contributions of institutionalised solidarity are comparatively generous. Prospects are yet more dim in states where the welfare of the many is increasingly privatised, tied to labour market participation and corporate affiliation, and where the institutional means of enforcing solidarity are progressively weakened. In whatever way national social policy is institutionally orchestrated, welfare or its absence is increasingly a matter of relative deprivation and structural marginalisation. Marshall's vision of a society of equal social membership may well become as remote as the full-employment context he so clearly presupposed.

European integration takes place in the environment of increasing 'globalisation', i.e., the internationalisation of capital movements, trade, and financial markets, all limiting the scope of manoeuvre for state action. It is increasingly difficult

5. Marshall (1992).

6. Several studies show that core services remain intact or have been extended (Goodin, Le Grand, et al. (1987); Moran (1991); Pierson (1991:141-78)).

7. Gorz (1990); Loftager (1996); Offe (1996). There is much debate but less consensus about the character, structural characteristics, and size of the 'new underclass' (Goul Andersen (1996); Roche (1992:11-68); Schmitter Heisler (1991)).

for governments to pursue progressive social and labour market policies, because macro-economic tools to do so have been seriously curtailed.⁸ However, the future of the much advertised *People's Europe* is still very much in the balance. Economic prosperity and political democracy was aided in new democracies like Spain, Portugal, and Greece, and hopefully the story will repeat itself when the Union moves towards Eastern enlargement. But it is not at all clear if a 'social Europe' of converging minimum wages, regulated industrial relations, concerted employment and training programmes, and negotiated finance policies could soon begin to take form. And for the time being, so-called European citizenship remains rather meagre.⁹ Moreover, it is not in fact clear that the brave peace-and-prosperity project of the European Union could itself survive in the long run. Unless popular legitimacy and identification with the project is strengthened, a very real danger still exists of a gradual de-integration process gaining momentum.

A third area of concern for the future of liberal orders has appeared as another aspect of 'globalisation'. It is the increasing size of the group of present-day *metics* in all European countries: refugees and immigrants who only enjoy some of the rights of citizenship, and do so at the discretion of political systems given to xenophobic whims, whenever the moods of electorates take a turn for the worse. Worse, also of increasing size is a group of illegally resident aliens who seek to secure a living on the fringe of society, effectively unprotected by legal rights.

Fourthly, after 1989, some commentators have seen the modernising dynamic of capitalism and market economy as so strong that democracy and constitutionalism will automatically follow. But to believe in such automatism seems particularly foolhardy in view of recent events. In parts of Eastern and Central Europe, and certainly in some of the new states of the former Soviet Union where civil traditions are weak or absent, the very foundations of democracy have yet to be put in place. The task of constitution building, including instalment of provisions for minority rights or merely avoiding constitutional discrimination or exclusion of minorities, has proven a formidable task. Securing democratically responsive governments and systems of effectively competing elites is a next, equally difficult step. But what is most striking in these countries is the difficulty of having, not just 'civil governments' but also 'civil societies'.

Often, the aftermath of totalitarian rule is characterised by the near absence of civilised public space. Levels of interpersonal trust and standards of public debate are low, the respect for the rule of law is poor. In some countries, 'societies' have been reduced to aggregates of atomised individuals and families, fending for themselves, and an uncivil 'economy', dominated by mafias, corrupt politicians, and unresponsive administrators.

8. Newman (1996:51-108).

9. La Torre (1995); Martiniello (1994); Newmann (1996:138-72); Welsh (1993).

Fifthly, in the environments of imploded civil societies, but also under much less serious circumstances in the West, Europe has seen a dramatic revival of dormant nationalisms, some of them with distinctly ugly faces. The quest for identity security and the advocacy of exclusive policies of ethnicity may have all sorts of reasons, some of them quite tangible and material. Whatever its causes, this type of 'politics of identity', at least in its more sinister versions, is threatening the very core of liberal political orders, namely equal citizenship.

There is no need to exaggerate the shortcomings of global liberal democracy. The fall of Soviet communism remains the most promising event since the end of the last world war. And, relative to centuries of despotism, the recent increase in the democracy count is hardly a council for despair. But in many new democracies what is gained may yet be lost, painful transition processes are not over, constitutional changes and the entry into office of liberal elites have not yet produced a democratic political culture. Apocalyptic diagnoses of warring 'civilisations' aside,¹⁰ the perceived cultural paternalism of Western values remains a seemingly easy target for elites who pursue strategies of national mobilisation and seek to cloud over their own shortcomings. And if human rights are on many lips, there is also at the heart of liberal societies, in universities, in the media, in everyday discourse, a new growth of a peculiarly defeatist relativism about the most basic of liberal values, including the Enlightenment heritage of equality, reflective personhood, and belief in rational argument.

More profoundly, I find cause to question what is the relevant yard stick when we speak of 'liberty' and 'free societies' and suggest that a proper place to start is with the original Roman-legal concept of *libertas*. *Libertas* or citizenship status is the legally defined and legally underpinned set of protected spheres for unimpeded activity, personal immunity, and positive material claims which is enjoyed by an individual - against the institutions of the state or against other citizens - as part of a collective arrangement where each citizen grants the same status that he enjoys himself to all other citizens. Whatever freedom is - whatever are the rights or other legal content of citizenship - it must be *secure*. A person is free to the extent that his status is *actually*, i.e., socially and materially, recognised and realised. And in an important sense, as recognised by Machiavelli and Montesquieu, one is not really free unless one *feels* that one's freedom is secure.

When this is the standard, a liberal order - if literally understood as an order of *liberty* - is certainly a precarious achievement. It is not in place if large groups of people experience that their rights are by legal letter only, ignored or violated in practice at all levels of state administration or in encounters in civil society with representatives and institutions of a majority population. One's liberty is importantly incomplete if enjoyed at the discretion of a momentarily benevolent state, or

10. Huntington (1993).

in exchange for support to a ruling group. A person's freedom is seriously curtailed if his rights are constantly questioned, and his actions and opinions in the name of these rights are met by suspicion and intolerance. People are not really free if they live lives full of fear and apprehension, afraid of the thief in the night or the gaze of strangers in the street.

This idea of liberty is quite broad. It is also different from traditional analytical conceptions of (negative) liberty, the stringent use of which I certainly have no wish to belittle. In the course of this thesis, I define the conception with some care, delineating it from other conceptions of negative liberty. And, having demonstrated the long history of ideas lineage of *libertas*, I hypothesise that it captures a universal human value which emerges in the most diverse historical and cultural circumstances.

Many liberals are too complacent about these matters. Theorists from Fukuyama to Rawls place undue hopes in the inherent reason and moral capacities of the individual and society. Less idealistic liberals - i.e., Gellner - stress the importance of socio-economic development and the civilising effects of the market. Others rely on a pluralist 'elective' civil society (Rosenblum), liberal 'irony' (Rorty), or well-designed institutions and effective rule of law (Bobbio).

The thesis certainly does not deny the relevance of these factors, nor does it belittle the real progress the world *has* recently seen. But it points to a specific view of the precariousness or - the guiding metaphor of the book - the *fragility* of liberty. However important some of the above factors, liberal orders also need vigilant *citizens*.

To anticipate some central points to be made in what follows: Liberal constitutionalism as a political project cannot survive with the exclusive help of well meaning modernisers, aiding the unfolding movement of progress. It requires a political culture as well as a strong and vigilant critical public which is capable of passing judgement. And the functioning of such a public is itself best understood as an ever occurring process, which may, in principle, come to a halt tomorrow. In an important way, rights in a constitution are only as safe, as recently noted by Jürgen Habermas, as the public political culture supporting them. As one of the most important conditions for such support, citizens must be constantly reminded of the fragility of their rights, and of the need to protect and realise them as a common endeavour. But it is equally important that the very content of the liberty status everybody enjoys can somehow be agreed upon, and legitimated through time. And even if these matters are in place, the very willingness to participate in a political community of *libertas*, fulfilling one's civic obligations, sharing rights with groups of different others - perhaps with a different cultural background than one's own - is a matter of concrete and bounded solidarities that need to be constantly generated.

Moreover, the very necessity of having political activity by citizens should be recognised at the level of theory. A normative theory advocating orders of liberty, whatever the content of the order or the form of the theory, must incorporate the need, the desirability, and the worthiness of such activities - whatever they be. And it must attempt to specify *what are* these activities, and what are the conditions of bringing them about. Or, if a theory does not do so, it has to confront very seriously the *question* why such activity is not deemed important.

These ideas about the fragility of liberty and about the need for citizens to install, protect, realise, and develop it as an essentially common affair, are at the core of the republican tradition of political thought. I suggested above that this republican analysis is still *empirically* relevant in our contemporary world, and in the course of this thesis, particularly towards the end, I shall assume, also for the sake of the progressing argument, that it is indeed relevant. But I do not attempt to undertake any part of such a massive and complicated empirical republican analysis. However, I do believe that doing so is both possible and important, and that republican sensitivities could inspire contemporary social science research in many areas. In stead I look at how arguments have been forwarded in the past for the relevance of civic involvement in politics. I also attempt, on this historical background, to systematise, in a set of analytical dimensions, these republican arguments about the fragility of liberty. Thus, it is the historical genesis, conceptual and theoretical content, and, quite tentatively, the contemporary theoretical relevance (assuming its empirical purchase) of this tradition that I shall explore in this thesis.

2. A Contested Tradition

In trying to make some sense of certain familiar images of virtuous citizens acting in common in the public sphere of their *Res Publica*, I partake in a project of textual excavation and theoretical reconstruction which, while never absent, has recently begun to receive a great deal of attention.¹¹

In doing so, I am acutely aware of entering a field of great academic controversy. In the chapters that follow, I question several standard interpretations of the very point and guiding intuition of the republican tradition in Western political thought, as well as the standard views of which insights may be reaped for contemporary theoretical purposes from studying this tradition. Republicanism, in fashion in many circles at least since the publishing of J.G.A. Pocock's impressive *The Machiavellian Moment*, has been misrepresented by foes and friends alike, including by the latter, formidable figure. And this misrepresentation has brought nothing but confusion into the debates of contemporary political theory.

Particularly misguided is the representation, already common in the Enlightenment, of republicanism as a voice from a bygone, nobler age before the advent of

11. In particular by Quentin Skinner and Maurizio Viroli.

individualism and petty materialism, where life was hard, but where politics afforded higher rewards for deeds which, in the words of Montesquieu, would "astonish our small souls":¹² the communal joy and recognition of equals in action, the purification of spirit or realisation of self, the building of character. All with private life as a *secondary* matter, a realm of necessity to escape, or a mere retreat to be frequented in the intervals of battle and public appearances.

Although such rewards might indeed be sought by some, and while some of the writers in the canon of great republican figures were more susceptible to these ideals than others, I argue that it is a mistake to see them as the guiding lights of the tradition. Again, what such readings overlook is the constant and towering presence throughout the republican tradition of what, in De Grazia's phrase was "the point of it all" in Machiavelli - in Machiavelli's own words, "enjoying what one has, freely and without incurring suspicion ... the assurance that one's wife and children will be respected, the absence of fear for oneself", all part of "that common advantage ... which results from a self-governing state".¹³

If the writings of Cicero, Machiavelli, Algernon Sydney, Jefferson, or Tocqueville or even those of Aristotle and Rousseau are carefully studied, it is equally difficult to find here any early statements of the peculiar contemporary notion of a shared, substantial moral life as a political concern of supreme importance, and potentially opposed to the enjoyment of 'formal' legal rights and private liberty. Nor do we find prototypical ideas of the existence, let alone the desirability, of 'selves' that are closed vessels of cultural signification, as some communitarians would have it. And we certainly nowhere come across views advocating that the most important human interests and goals are entirely relative to 'culture', or that the latter is made up of closed and mutually incommensurable moral vocabularies - a view which has also been connected to the tradition.

And if neither the beauty of political action nor communitarian belonging adequately describes republicanism, nor does it have much more in common with the idea of politics as the primordial agonal positing of 'difference' or constitution of ontological selfhood as 'subject positions' - the spectre of the post-structuralist *polis*. Nor finally should we see the Rousseauan idea of moral liberty (as opposed to what he had to say of *civil* liberty) as typical of the republican tradition. The republican type of 'autonomy' tends to offer less than the moral transparency of laws given and affirmed onto ourselves, or the associated possibility of a rational social consensus. But it also, I believe, offers a great deal more.

I shall argue that the republican tradition - the claims involved by using this term will be explained below - is centrally constituted by a single powerful theme about *the fragility of liberty*, which has exhibited an extraordinary resilience and

12. Montesquieu, *The Spirit of the Laws* (IV,4).

13. De Grazia (1989:193); Machiavelli, *Discourses* (I,16).

continuity despite its changing conceptual and historical contexts and manifestations, and which the mentioned customary interpretations overlook. However, it becomes an important task for me to point out *in what way* the republican tradition I think exists is different from such representations. For instance, there certainly were republican conceptions of 'self-creation' and 'community', but they are always 'instrumental' – hence the broad republican point that self-esteem, common identifications, and social norms may after all be necessary in certain ways to motivate or guide citizens.

The central themes of the thesis may be anticipated further by looking at two other debates, both of which help explain why republicanism is more than another object of esoteric scholarly dispute in the history of political ideas. Republicanism may be usefully seen as a distinct historical and theoretical answer to two families of questions in political theory, one about the possibilities and purposes of *political participation*, the other about the alleged *defects of liberalism*. The second question is most important for my account, but also the first has guided my investigations.

3. Politics with Pathos?

In Western political thought a long tradition recommends the active involvement of citizens in politics. In particular since the sixties, the positive connotations of political participation have matched those of 'democracy'. Some have seen political participation as an answer to many of the ills of modern industrial and capitalist society, including moral heteronomy and alienation. To some extent, it makes sense to see the present thesis as an attempt to ask and answer the question, "why participation?". Lately, the ideal has been running out of steam in some quarters, with a growing awareness of the considerable distance between the ideal requirements of an active life of the modern *polis*, and our considered judgements about how most people wish to spend their time.

By and large, I share this scepticism.¹⁴ Most strong theories of participatory democracy are, I believe, unsatisfactory. Their arguments may support participation in some places, some times, for some people, but as general cases for *participatory societies* with citizenship primarily defined by political activity, they do not work. Most of us know, with Oscar Wilde, that political participation, like socialism, would easily 'take too many evenings'. We might of course find ways to organise our days and evenings to fit our lives to innovative participatory schemes. But the deeper problem is that what political participation is said to do for us is not so plausible or important that most people would dedicate their spare time to its pursuit.

14. I discuss the reasons for such scepticism in some detail in Mouritsen (1994), to which the following remarks refer.

To state that the participation theories of Rousseau (or rather, of the participatory radical democrat which it has become customary to see in Rousseau) or J.S. Mill are 'unrealistic' because unfit for modern conditions is of course an ideological move of little value in itself. It may well be that society can be changed so as to make the realisation of such theories more realistic.¹⁵ But at least one common advocacy of participatory societies which rests its claims on the nature of social reality seems to me obviously mistaken. If people wish to participate less now than they are alleged to have done at certain times in Greece or New England, this is hardly merely explained by the rewards of doing so being much smaller. Surely, the rise of modern individualism and the spheres of privacy and intimacy have been associated with forms of human gratification and fulfilment that cannot in any meaningful sense be regarded as mere compensation for a life spent outside the public light. Indeed, the very contrast between motivations 'then' and 'now' may well be a mistake.

But my scepticism is theoretically informed. It seems to me, although I can only stipulate arguments for my case here,¹⁶ that many of the arguments of theorists like Barber, Gould, Macpherson, Pateman, and Taylor rest on shaky foundations. This is so whatever important differences exist as to what political participation means (i.e., what constitutes 'participation', and what counts as 'politics').¹⁷ However, as with communitarianism, some of the standard arguments for participation 'for its own sake' may be rendered sounder when given an *instrumental* twist.

First, it is probably true that *personal autonomy* understood as a reflective understanding of the principles of one's life may arise through some forms of participation,¹⁸ although I find it unconvincing that it could not also arise from many other things (reflecting alone, reading books). It is also something of an Enlightenment prejudice that anything approaching actual practice of such full reflective autonomy, à la Sartre, could ever be a motivating factor, or even a very robust moral ideal. However, it is another matter - one which is certainly found in republican writings - that societies require citizens that are *capable* of reflection, that practising it is worthy and should be encouraged, and that some forms of participation may further such capacities.

Secondly, the most important classical argument for political participation, derived from Rousseau, is an idea of *collective autonomy* or 'self-government'. Thus, in as far as we live in societies, it is only by actually participating in all decisions that have repercussions on our own lives that we could be autonomous, i.e., by willingly

15. It is indeed "misleading to claim that facts can simply refute ideals and demand changes in the essential requirements of a normative theory" (Duncan & Lukes 1963:167-74; cp. Taylor (1973); Skinner (1973)).

16. See Mouritsen (1994:62-74).

17. Mouritsen (1994:57-59).

18. E.g., Gould (1988:52,79,283ff).

consenting to the laws governing our lives as well as everybody else's lives.¹⁹ The problem here seems to be that we either may already agree reflectively with these laws, and then it is not necessary to participate. Or we do not agree, and then participating does not really help.²⁰ This idea of collective autonomy is linked to, but analytically distinct from, the idea of political participation as a tool of transformation of individual preferences. In order to work, however, the former requires a Rousseauan outcome of the latter (a *consensus omnium*), which is unlikely to appear - for reasons also discussed in the thesis. This said, it is certainly recognised in various ways in the republican tradition (abstracting from Rousseau) that political participation of various forms is an important way to establish and above all to legitimise and to stabilise some form of reasonably impartial *concordia* or constitutional settlement - which individuals can somehow recognise, even though the actual degree of transformation of preferences and transcendence of power and interest may be rather less than optimal, and at any rate an entirely empirical matter.

Thirdly, the idea that political participation is a way of experiencing *community*, either in the sense of being integrated into a comprehensive moral universe, or in the sense that participating as such is a valuable communal experience, I find unconvincing in most of its forms. Even if a substantial moral community could exist, it is not clear that political participation would be the only, or the best, way to be integrated into it, or that political participation of most forms is a particularly 'communitarian' experience. But again, when this is said, it may still be the case that *some* forms of participation constitute an important basis of *certain* (political, liberty-centered) common identifications and solidarities - e.g. in the form of patriotic remembrance - which are indeed needed by political orders.

Finally, in the sixties it became fashionable to see in political participation a performative, expressive, or self-creative aspect. Politics may indeed allow such rewards. They did to Machiavelli, and he was pining for them as he wrote the *Discorsi* in *Sant'Andrea in Percussina*, from which on a clear day he could see the skyline of Florence. But he had no illusions that many others shared his cravings. At any rate, many types of politics seem to be rather the wrong places to look for these things, certainly for the majority of people. The idea that the person who does not act politically forfeits the most essential part of his being²¹ is surely difficult to accept. But this does not mean that the enjoyment of self-esteem and public recognition or, negatively, the fear of shame, may not be important motivations for the individual to be active. Indeed, these matters were certainly important to republicans.

19. Rousseau, *The Social Contract* (I,1); Plamenatz (1963:269); Singer (1973:45-53); Gould (1988:233ff)

20. Nelson (1980:41-45); Christiano (1990:158-59).

21. Most recently Oldfield (1990).

There are other and better ways to argue the need for more participation. First of all, behind the autonomy argument, there may be a more tangible one that stresses *control*. More participatory structures may be advocated because they are simply better ways to secure adequate representation of interests, or constitute an alternative channel of power.²² This is a type of argument with which I have much sympathy, and parts of the republican argument that I offer may be seen as a variety of such views. But there is more. The republican tradition is the repository of *prima facie* arguments for the continued need to have high levels of political participation in societies whose citizens wish to secure their most important *common* interest, which is their interest in common liberty.

However, there is not a single account in republican thought of the exact types and locations of activity expected of the citizen who possesses *civic virtue*. There is not really a republican theory of political participation. This is important: The reason that there is no republican theory of participation is that not participation of a specific sort, a specific amount, or inside a specific framework, but its instrumental point – common liberty – is at the heart of the tradition. There are all sorts of answers to exactly which activities are the best means to secure this liberty. Republicanism does not usually advocate anything like 'direct' democracy. And many things besides democratic decision making may be implied by the central concept of *self-government*. Machiavelli's civic virtues consisted in fighting in wars and discussing (or shouting and quarrelling) in the city square. Montesquieu pointed to the restless and shifting demands on magistrates by private (business) people, but also the determination of patriotism in the face of war. Tocqueville analysed associative activities in civil society. Both the variety of activity and the richly diverse historical texture of the liberty which they aimed at securing I seek to encompass with the broad term 'republican citizenship'.

In a sense, republicanism does offer a politics with pathos. Machiavelli, Montesquieu and Algernon Sidney knew well that modern politics was about group interest, the quest for power and influence, and envy and greed. But politics could be, and occasionally had to be, about higher things. Indeed no higher thing existed than the noble fight for the liberty of the city – the *libertas* which was one's own, but also everybody else's. To Cicero, and possibly to Machiavelli, a special place in Heaven was reserved for the founders of cities. To Arendt, the members of the

22. Some participation theorists, particularly Barber (1984) and Pateman (1970) are also arguing this. Strictly speaking, these are also empirically contingent arguments. Control and interest representation may in fact be enhanced by certain forms of delegation, economising on talent and time, combined with an extension of democracy to ever more social *spheres* (Dahl 1982; 1985; Bobbio 1987). They do not quite work as ideas of *equal* participation (if the ideal is political equality (Dahl 1979; Lively 1975; Beitz 1989) this would seem to imply the need for *unequal* participation – empowerment of the weak and excluded – as some have more resources

French *Resistance* could 'afford to go naked'. Particular acts might be noble, courageous, worthy of admiration, or just plain decent. Republicanism is not a theory about the intrinsic value of a 'participatory' society, or civic activity as a way of life. The good republican citizen participates when it is necessary. When this is, where it is, and how much it takes, varies with the particular theory and is at any rate an empirical question. The pathos of republican politics derives from the value of its absence, from the experience of a freedom which is also freedom from politics, from appreciating the fragility of such a state of affairs, and from the occasional sacrifice needed to maintain these great goals.

4. What's Wrong with Liberalism?

Although certain liberals, as recently argued by Phillip Pettit (whose work is discussed at length in this thesis), seem to advocate a *liberty of the heath*, of risky chance and survival outside the walls of the city, this is not true for most liberals. Nor can liberalism be dismissed as a doctrine of 'possessive individualism', as such a doctrine, to the limited extent it appeared, was a rather late phenomenon. Although the republican *conception* of liberty is different from various liberal ones, not only do they share the same *concept* of liberty,²³ the most basic substantial value of republicanism and most of what we habitually refer to as liberalism is really the same.

Because the reconstruction of republican citizenship that I propose takes *libertas* so close to what we associate with 'liberalism', it becomes important to analyse the difference between the two. This is the second and more important angle on my reconstruction of the genesis, conceptual and theoretical content, and contemporary relevance of the republican argument: If republicanism is merely an older version of the advocacy of negative liberty - less individualist, less concerned with inner moral life, less rationalistic, less given to rights-fundamentalism all according to which modern liberalism it becomes confronted with - what is the difference that really makes a difference?

The following three questions seem relevant here, and all have guided my endeavours. First, historically, in what way is a republican tradition distinct from, and discontinuous with, a liberal one? Or rather, as there are many different liberalisms and as the term itself should perhaps be reserved to relatively late doctrines - of the nineteenth century rather than the eighteenth, let alone the seventeenth - in what ways, when, and with which delineating conceptual tools does it make sense to say that republican accounts of liberty were replaced by accounts of liberty which were 'unrepublican' (or 'liberal' in inverted commas, 'proto-liberal', vari-

and clout than others).

23. As indeed they do, in Rawls' formal sense of the distinction, with various positive conceptions of liberty (Rawls 1972:5; Oppenheim 1961; MacCallum 1972).

ous species of 'enlightenment' theories – different terms used in the following to make similar broadly anti-essentialist generalisations)? Secondly, given that it is indeed different, why is this difference important for political theory today? Why, in particular, should liberals be concerned with, or be disturbed by republicanism? (And should some liberals – Rawls and consorts perhaps – be more disturbed than others?) Thirdly, what is the relevance of the observation, already noted, that republicanism is very much constituted by its alternative *causal account* of the empirical conditions of the enjoyment of liberty – as compared to 'liberalism'? What, specifically, is the significance of *this* for contemporary political theory? In what follows I anticipate the significance of each of these broad questions. I start with the second question, go back to the first, and end with the third.

4.1 Republicanism and the Liberal-Communitarian Debate

In what ways do republican arguments have purchase on contemporary debates in political theory? Relative to the history of ideas reconstruction of republicanism, the question is not addressed very much in the body of the thesis, except towards the end. A few remarks on how republicanism relates to the famous liberal-communitarian debate in political theory are in order in this Introduction, however.

This is, firstly, a clearing operation. As noted already and, I believe, amply demonstrated in what follows, it is a mistake to associate the republican tradition with most of the points made by authors such as Sandel, Walzer, Taylor, or Etzioni ('communitarianism' admittedly being a broad school). Despite certain structural similarities and occasional overlaps, republicans move inside a completely different universe of value, and carry little culturalist baggage of 'traditions' and 'embeddedness'. Correspondingly, the critical points against contemporary liberalism that a reconstruction of republicanism may yield are really quite different from the points raised by the above authors – many of whose ideas may be seen as part of the problem from a republican perspective.

Although this is certainly still disputed, and although I cannot enter the debate here,²⁴ I believe a review of communitarian points and liberal responses – from authors like Amy Gutmann, Will Kymlicka, Stephen Macedo, and Stephen Holmes to name a few²⁵ – also shows that whatever else is the matter with liberalism, it is not captured by the communitarian critique, let alone remedied by communitarian political alternatives. If modern individuals live inauthentic lives, alienated from their community, and if modern societies lack ethical coherence, liberalism is hardly to blame. And, by and large, even limited departures from liberal schemes of justice and rights seem to be a rather bad idea. Thus, I assume that contemporary political thought must commence from a recognition that the so-called liberal-

24. I do so in Mouritsen (1996; 2000d)

25. Gutmann (1985); Holmes (1989); Kymlicka (1989:47-99; 1990:199-237); Macedo (1990).

communitarian debate was 'won' in a very basic way by the liberals. However, the liberal-communitarian debate also serves to expose certain contemporary liberal shortcomings. Liberalism, I would argue, is challenged to become more 'communitarian', although in a different and more political manner than communitarians think it should. I have in mind a number of points, although I can only stipulate them here:

The critique of liberal 'rights talk' is generally based on a severe misreading of the very point of liberal individualism, liberal constitutionalism, and liberal conceptions of the person - at least when by liberalism we refer to the broadly neo-Kantian, universalist mainstream, rather than to utilitarianism or Hobbesian perspectives.

Thus, I would argue that liberalism possesses robust arguments for the primacy of some scheme of individual rights, arguments that take 'culture' more seriously than communitarians do. Communitarians have at times counterpoised the value of culturally embedded selves to what is regarded as superficial liberal choice and reflection. But it is exactly the recognition of such (overlapping, shifting) embeddedness - as something which is both at the heart of what is valuable in any human life, and as something which may cause us to be intolerant and incapable of living in justice with others - which renders reflective choice a required human capacity, and which renders rights to pursue the course of such choice necessary.²⁶ That such (no doubt partial and peace-by-piece) reflective critique of one's own 'tradition' or 'embeddedness', or of its most 'basic' elements, could be impossible is also hardly a tenable position.²⁷

Communitarians have also argued that a public culture based on 'formal' rights constitutes an impoverishing straight jacket for any one culture. But it is exactly the recognition of the *diversity* of such cultures inside any political community, of the possible conflicts between them, and of the need to protect those individuals who wish to deviate from 'their' culture - whether for more or less 'impoverished' motives - that necessitates the formality of rights. Indeed, this core communitarian critique of *recht*, in both strong and not-so-strong forms seems to reflect a lack of concern with those several dimensions of pluralism and conflict which render the 'formality' of rights necessary, *a fortiori* for complex modern societies.²⁸

Finally, to the extent that communitarians argue the impossibility of justifying a moral and political order *sub specie aeternitatis* and have in mind the degree of 'thickness' of a universalist conception as found in Rawls' principles of justice, I

26. E.g. Sandel (1982); Barber (1984:213ff); MacIntyre (1985); and for the liberal response e.g. Kymlicka (1988:282; 1989:49; 1990:13-18), Macedo (1990ff).

27. See for instance Kymlicka (1993:213) against Walzer and Bell.

28. Bell (1993); Sandel (1992:93-97; 1996); Taylor (1989); Walzer (1990a); and for the liberal critique e.g. Kymlicka (1988), Lukes (1991a; 1991b); Macedo (1990).

tend to agree.²⁹ But the replacement of such an ambition with relativism such as Rorty's 'what we like around here', or with Walzer's more sophisticated ideas of internal criticism, seems equally misplaced.³⁰ Both positions refuse to take moral conflict between cultural values seriously, including the way that such values diverge, clash, or may be reconciled. Moreover to the extent that we have in mind a *moral* reconciliation of diverse cultural values, based on, or at least referring to, moral arguments rather than coercion and violence, it is difficult to see that such a reconciliation could avoid a fundamental moral premise of respect for equal human dignity,³¹ or, again, avoid a political premise of constitutionalism and rights of some broadly familiar liberal form as the practical embodiment of such respect.

What are then the liberal shortcomings? They are connected to the above. Liberal theory, generally speaking, has too little to say about how its most basic values are secured and furthered in practice. Put polemically, liberalism has to accommodate itself in several ways to the need for liberal *community* – only not in the ways presupposed by communitarians:

(1) The liberal turn to culture in the wake of communitarian criticisms is timely, but it also highlights the fragility of constitutional orders under conditions of value pluralism and value conflict in increasingly multicultural societies. More and more sophisticated versions of liberal justice may create increasing space for cultural diversity, place increasing demands on the impartiality of liberal orders, and demand an ever more wide-ranging idea of tolerance, *in theory*, and all in the name of exposing the blindness and biases of previous liberal cultures. But if liberalism as a *political project* was difficult for individuals to swallow in the days of Locke, it may be even more difficult to accept in a culturalist present, at least when it comes to translating lofty principles into practice.

Updating Lockean pluralism – Rawls' new point of departure – in a realistic multicultural scenario, and reminding ourselves of the magnitude of possible cultural expressions that are possible in a good life, we see how demanding a liberal project really is. It should be increasingly evident to all but the most complacent that many groups are extremely marginalised and powerless, that rights and public tolerance are especially important but remain insecure exactly for such groups, and that it is extremely *difficult* for us all to remind ourselves and others of what tolerance and justice requires. Examples are *legio*, but we can safely say that the same conditions that make liberal constitutionalism necessary in the first place also serve to remind us of the contingency of the accomplishment. Insofar as communitarianism criticises privatism, egoism, and lack of solidarity, liberalism – rightly understood – ought to become a very communitarian reminder of how much

29. Rawls (1972:260-65); e.g. Lukes (1977a; 1977b).

30. Rorty (1985), Walzer (1987;1988).

31. Kymlicka (1990:4); also Benhabib (1992:30-31); Dworkin (1978:179-83); Lukes (1991c:65-67); Sen (1992:19).

we owe each other in respect for justice and rights. Neither liberal institutions nor public consensus on abstract liberal values automatically produce liberal citizens, capable of liberal practice and liberal ways of life. The *civic virtues* required in our world may not be quite the ones Machiavelli or Sidney had in mind. However, the fundamental idea of vigilant citizens protecting their common liberty against arbitrary power and intolerance, from despotic states, designing elites, or narrow-minded majorities, through public scrutiny and critique, concerted action, civil disobedience, or the maintenance of an open public debate, has the same structure. In this, potentially quite demanding sense a liberal society, I believe, must indeed be a liberal *community*.

(2) Contemporary liberal theory, with some exceptions, has yet to deal adequately with what Rawls has called 'reasonable pluralism'. If communitarian relativism makes nonsense of such pluralism, there is no future either for ambitious schemes of the Rawlsian kind. The purpose of a politically relevant liberal theory cannot be, as in Rawls' recent book, to devise ingeniously the circumstances under which an 'overlapping consensus' could have *justice as fairness* as its 'stable' common denominator. Rather, it must recognise the unavoidable plurality of reasonable contestations of liberal citizenship *inside* any historical political community (and not neatly distributed in each their community, as liberal communitarians would have it), and the need to find means of public deliberation and justification to ensure working constitutional settlements and resettlements. Moreover, liberal constitutionalism has to become constitutionalised in the first place: For political purposes there is usually no recourse to philosopher kings with manuals for legitimate liberal variation. Even under the best of circumstances, many inputs into constitutional deliberations will fall short of the requirements of *reasonable pluralism*, yet an imperfect constitutionalism is better than no constitutionalism at all.

If we leave behind facile relativism as well as late hopes of formulating a liberalism *sub specie aeternitatis*, and start to take pluralism seriously,³² I believe we still have very good reasons to be operating inside liberal parameters of a pragmatics of equality of respect for all human beings, of reflective public justification, and of plausible hypotheses about certain basic - at any rate historically quite stable - human needs and interests.³³ Yet, liberal *citizenship* can and will give rise to a variety of - contingent and contested - historical manifestations in the constitutional orders of different states or, over time, of any one state. Even though 'the right' is still placed above 'the good', liberalism must become communitarian in the sense that 'the right' may only be defined and debated in the light of a certain social and cultural facticity, i.e. a historically specific constellation of social and cultural

32. See also Lukes (1994).

33. In Mouritsen (2000d) I discuss these matters in the context of Berlin's (and Steven Lukes') writings on the nature of value pluralism, including the former's

groups, who must find out what is reasonable for *them*. Moreover, such definition and debate is inescapably linked to empirically informed (and politically contested) generalisations about matters like realism, functionality, possibilities of local combinations and compromise, and the likely side-effects and necessary sacrifice involved for different groups of translating political values into institutional practice and public policy. Although the heuristic and clarifying benefits for future political theory of Rawlsian-type constructivism of one or more isolated political values should not be denied, my brief remarks here point in the opposite direction of such moral justification which proceeds essentially through philosophical *abstraction* from 'the world'.

(3) A third way that I believe liberal political theory – again Rawls in particular – concerns questions of moral motivation and solidarity. Rawls' account of the origins and dynamics of a working 'sense of justice' is, at the very least, sociologically and psychologically unconvincing.³⁴ What I have in mind, and what contemporary liberals have only recently begun to talk about, are those necessary boundaries, geographical as well as identitary, that *any* political community must have, also if they prescribe to universalist conceptions of justice. Indeed, to the extent that liberal communities require more and more demanding practices in the name of justice, the need for bounded *solidarity* becomes pronounced (it is a sad fact that the most 'universalistic' welfare states today have relatively strict immigration and citizenship policies).

The idea – which is discussed in more detail in the Conclusion – is that there is a difference between affirming principles of justice as reasonable and, firstly, generating the moral will to give justice to others (*a fortiori* when we are talking about demanding distributive schemes), and secondly, doing so to an extended group of strangers. Whereas Rawls expressly presupposes boundaries in the sense of states, my point is that delineation of membership is hardly a matter of a mere 'division of labour' between such states. Liberal communities must give up neutrality and accept the legitimacy and indeed the necessity of bounded solidarities, which include nationally particular political identities. Not in order to protect and further them whatever their content, let alone to advance communitarian arguments about cultural birthrights to territory, but rather in order to address continually their origin, content, and dynamic – as the precondition for liberal solidarity. Today's liberalism, particularly of the neo-Kantian kind, has very little to offer by way of a theory of how to generate such solidarities, or how to thematise the solidarities that do exist (and may be unquestionably relied upon by liberal states), making them as accessible, reflective, and civic as possible.

notion of 'empirical enlightenment' (Berlin 1969b; 1990).

34. Rawls (1972:453ff).

For both the above sets of reasons - (2) and (3) - a liberal society will be a political community - inside a large universe of possible legitimate variation.

(4) If we consider seriously how demanding it is to realise liberal tolerance and respect for justice, and also how controversial processes of political legitimation often are, it is evident that liberalism cannot 'stay on the surface'. A comprehensive liberal rights regime requires willingness on behalf of its citizens to thematize in public their own ways of life. This may only be expected if liberalism goes 'under the surface', crosses the boundaries between 'public' and 'private', and becomes a part of these ways of life.

If communitarianism understands itself as a critique of liberal neutrality about ideals of personhood and the good life, liberalism must declare itself communitarian in the sense of encouraging that any culturally specific identity be combined with a democratic and reflective, and thus controversial, liberal idea of what it means to be a good citizen. Under conditions of pluralism, all political orders involve cultural loss. The requirement that all cultures must be made to partake in a liberal outlook in obvious and unavoidable ways involves systematic endangering of cultural values - religious devotion, fidelity, authority - that do not thrive in an environment of habitual scepticism and reflectiveness. Just as liberal neutrality does not imply neutrality about its most important values,³⁵ it cannot be neutral about the conditions for the preservation of liberal values and institutions.

Whereas several liberals have criticised and questioned the coherence of Rawls' ambition in *Political Liberalism* to avoid a 'comprehensive' conception of reflective autonomy in favour of a 'political' conception of the person,³⁶ and while some new liberals positively stress the value and importance of reflective and active citizenship, such citizenship is still habitually treated as a happy by-product of multiple private institutions and practices in an undisturbed civil society.³⁷ The argument against even this liberalism may be that reflection has to be furthered and encouraged by the state, and may be connected as a consequence as well as a cause to the existence of a vibrant and deliberative public life.

Hence, a liberal society must also be a *political* community - a community confirming and furthering the value and importance of political life.

(5) Connected to this, although it is incorrect that liberals like Rawls or Dworkin, because of the importance they accord to inviolable rights, have no place for conceptions of obligations and duty,³⁸ it is certainly the case that these questions are underdeveloped. Moreover, the particular notion of a duty to participate in

35. Rawls (1993a:191ff).

36. See for instance Barry (1990).

37. For instance Macedo (1990).

38. Skinner (1990;1992), in his attempt to present republican thought as a challenge to contemporary liberalism, fails to do justice to what most liberals now as well as in the past had in mind with the category of rights. I discuss this point in

politics or the life of the community has generally been controversial, and at any rate the relation between such a possible duty to liberal rights has not been discussed. Also this point is briefly discussed in the Conclusion.

All of these points, I submit, make it relevant for liberals to look elsewhere for the inspiration needed to reconstruct liberal political theory. Taken together, the points constitute strong and politically far reaching reason for people of liberal persuasion to accept that liberal projects in several ways require 'political communities'. These are ways of life which affirm and practice reflective and activist political cultures, which legitimise constitutional orders as an ongoing concern of practical politics, and which somehow maintain solidarities that are bounded and finite, even while based on common commitments to liberal orders. This liberal caveat has not gone unnoticed in recent years. Indeed, several examples of attempts to create more 'civic' liberalisms may be noted, with many of which I have much sympathy. Some of them, more or less vaguely, refer to republican inspirations. The investigation of the republican tradition here undertaken could hopefully further inspire such attempts.³⁹

4.2 Historical Discontinuities between Liberalism and Republicanism

A main purpose of my historical reconstruction of the republican argument about the fragility of liberty is to highlight its relevance as a reservoir of ideas that may be remobilized and utilised to deal with the liberal impasse.

My *searchlight* on the history of republican thought is the wish to present a didactic picture of the variety and the changing historical form of these ideas, from ancient Greece to Tocqueville. Moreover, while the narrative thread remains republican, the significance of distinct republican orchestrations of the fragility of liberty theme comes most clearly into view at the points where they become challenged, displaced, or just forgotten by other forms of discourse, or where it was necessary and possible, as in several ways in the Scottish and American Enlightenment, and later in Tocqueville, to formulate republican points with new assumptions and on new conceptual territory. These 'other' forms of discourse, I repeat, may or may not be labelled 'liberal'. What distinguishes them in this thesis is that they were in different ways – on different dimensions of the fragility of liberty argument – un- or positively anti-republican. They were sometimes – as in the case of Hume – deliberately so. They sometimes may be labelled republican in some ways, and not in others (Madison, Montesquieu).

the conclusion.

39. For instance Ackerman (1988;1991), Bellamy (1992;1994), Benhabib (1992); Dagger (1997); Gutmann and Thompson (1996); Habermas (1992a); Macedo (1990); Miller (1995a); Viroli (1992:epilogue).

I make a point, in this thesis, of the fact that the historical contrasts often assumed are easily overdrawn, that the picture is somewhat blurred – *and* that the development of historical arguments is for that reason all the more interesting. Thus, for instance the fault lines between republicanism and liberalism is not a matter of 'virtue' versus 'rights' or 'possessive individualism'. 'Early liberalism' was sometimes concerned with something which was called virtue. And republican discourse survived comfortably into the age of natural rights discourse. While early republicans saw commerce and excessive personal wealth (but not property) as spelling the death of the city, later versions included the possibility of accumulating social and private wealth as a main fruit of common liberty. The debate over republicanism and liberalism in the history of ideas is an academic cottage industry in its own right, pursued with much scholarly sophistication. I argue that a great many accounts that are either *pro* or *con* 'republican revisionism' share a set of conceptual confusions regarding both traditions. To appreciate the historical discontinuity between republicanism and 'liberalism' more subtle means of distinction are required.⁴⁰ I believe the fragility of liberty theme, as I develop it, may give us such means. My contention is linked to specific views about political discourse in the history of ideas. In sections 6 and 7 below I shall say a little more about these matters. However, to anticipate, the swan song of republicanism does not coincide with the advent of commercial society, or capitalism, or natural rights doctrines.

4.3 An Empirical Argument

The third manner in which republicanism is discussed in relation to 'liberalism' is in terms of its relation to political realities – in the past and now – and in terms of what follows from the notion that the republican argument in a very central way is 'empirical' and 'causal'. I need to explain this:

All political theories of course have ontological assumptions, for instance about the structure of the mind, human nature, or the character of social bonds. They also have epistemological assumptions, i.e., about the nature and limits of sense perception or abstract reason. But political theories also have empirical assumptions, for instance about human motivations and capacities, or about the sources of human conflict, or the political conditions of solving or avoiding such conflicts. Crucially, they may be considerations about the conditions of realisation of the state of affairs and the values advocated in the theory – and additional values may depend in turn on these considerations. As already suggested I am arguing in this thesis that the distinctiveness of republican arguments, and also their relevance for contemporary political theory, has much to do with their specification of distinct

40. And in suggesting this I also criticise Quentin Skinner (and Phillip Pettit) for overstating the 'break' between republicanism and liberalism – although the way they do it is different from that of Pocock.

causal accounts and empirical assumptions concerning the civic conditions of *libertas*.

Thus, firstly, I make a great point (much more than does Skinner – see below) of stressing the very diversity and changing nature of these empirical and causal claims in the different historical circumstances where republican discourse may be encountered. The *problem* of securing liberty – over and above the intuition that ‘virtue was needed’ – was altogether different in Machiavelli’s city-state, absolutist France, or confederate America. So were the corresponding accounts of power and tyranny, of the types and formats of virtue, and of the nature of corruption.

If this is a rather obvious observation, it is connected, secondly, to the point – of which also a great deal is made in the thesis – that such empirical and causal assumptions very much constituted the grounds of *contestation* of republican thought. Thus, I hope to demonstrate, particularly in Chapters four, five, and six, that the potential resonance of an argument (at times in terms of the contested use of a concept in new circumstances, or with slightly altered meanings), was not first and foremost a question of appeal to (new) values. It was more often one of winning a contest of causal and empirical generalisation, while sharing broadly similar values. From such contestations new values (e.g. as connected to different virtues) certainly arose. And, while the persuasiveness of competing accounts was to a large degree a matter of adapting one’s arguments to new circumstances, and hence appear ‘realistic’, needless to say it also very much relied on rhetorical representations of these circumstances. The debate between the Federalist defenders of the American constitution and their Anti-Federalist opponents illustrates these points with particular clarity.

Thirdly, with the notion of republicanism as a reservoir of empirical arguments I suggest that, at a certain level of abstraction, these historically situated arguments may sometimes, if by no means always, inspire contemporary theory. Clearly, dramatically changing historical circumstances must be taken into account. For example, republican conceptions of patriotism may inspire the critical reconstruction of civic solidarity through more accessible and overarching ‘national identities’ in multicultural societies. But it is the structure of the argument (certain assumptions of the psychology of solidarity) rather than any one version of patriotism that may do so.⁴¹ But there are also cases where certain similarities in the historical political context are part of the inspiration. Thus, to take another example, a close examination of the American constitutional debate of the founding period reveals striking parallels with contemporary debates on the European Union.⁴²

This, fourthly takes us to the question of whether republican empirical and causal assumptions and arguments – in some modernised version – are relevant

41. Parekh (1991;1994) would be an example.

42. Mouritsen (2000c)

today. Is it for instance the case, as already suggested, that modern societies require more civic participation of one form or another? Is patriotism in fact realistically separable from nationalism? Has the development of political tolerance or public spirit anything to do with participation in, say, local associational life, and in that case which types of associations and under what circumstances? Does the popular legitimacy of a regime or a constitutional set-up depend on public deliberations, and under which form could such deliberations take place? Is it possible to analyse the content and progression of constitutional or quasi-constitutional debates in the modern world – say debates regarding the form of welfare state citizenship, or the creation of cultural group rights, or the form of supranational (European) democracy? And is it possible to diagnose, at least under certain circumstances, some degree of reasonable 'arguing', accessibility for powerless groups, and resonance of empirical evidence, or is politics under all circumstances entirely a matter of rhetorical hegemony and floating signifiers, with agents as prisoners of discourse rather than its reflective creators and users?

Such questions demonstrate that the republican tradition may also be seen – at a high level of generality, no doubt – as a normative problem horizon which generates research questions and causal hypotheses of great political importance. In order to investigate such hypotheses, the reading of republican classics quickly give way to sophisticated theories and empirical research of political science and sociology. This said, individual republican authors like Tocqueville constantly remind us of archetypal civic questions that we should never forget to ask.⁴³ In each their ways, Almond and Verba's *The Civic Culture* and Robert Putnam's *Making Democracy Work* may be seen as instances of attempts to ask such questions – *in casu* about what type of 'civicness' liberal orders require, and (Putnam) what generates it.⁴⁴ In this thesis I do not of course ask, let alone suggest the answers to such questions. But I certainly claim that such a task could and should be continuously undertaken.

Fifthly, and still related, I contend that in the same manner that republican arguments in the past relied for their persuasiveness (or were discredited) on perceived grounds of empirical reference and causal claims, the relevance of republican arguments for political theory cannot be dissociated from some reflection on their actual purchase on the world. The claim that contemporary (for instance liberal) political theory is *actually* vulnerable to the republican arguments that we may reconstruct, in part rests on our ability to demonstrate – or at least to substantiate as a plausible possibility – that the gradual liberal reversal of republican arguments was misguided, that the political history and present state of modern

43. That normative concerns and theories guide the selection of research questions and even their theoretical and conceptual framing is of course not news in the philosophy of science from Weber to Popper to Myrdal and Taylor.

44. I discuss (rather critically) Putnam's book in Mouritsen (1999a;2000a).

societies shows us that *libertas* remains fragile. Thus, the classical political philosophical questions about the existence and extent of republican duty, about the need to give up neutrality for the sake of an affirmation of a political way of life and a comprehensive ideal of reflective autonomy, and about a legitimate (identitary) delineation of membership, are also all of them, although not entirely or in simple ways, dependent upon the questions of whether virtue and patriotic solidarity are in fact needed, whether or not their generation has to be aided, and how this might be brought about.

Sixthly, it was a feature of not just republican but 'classical' political theory generally to be systematically concerned with empirical and causal claims, with resting normative theory on such claims, and with attempting to refute other theories on the basis of empirical criticisms.⁴⁵ That this is true of a great number of historical critics of republicanism, as well as republicans themselves, is amply demonstrated in the thesis. However, in this respect the Rawlsian revolution in political theory was something of a *break* with the classical tradition (rather than a resumption of its concerns, as it is usually assumed),⁴⁶ because its proponents tend to make a virtue of abstracting as much as possible from empirical and causal assumptions for the sake of analytical high political theory or moral philosophy. Here, the concern with 'feasibility' or 'realism,' i.e. institutional functioning and generation of moral motivation is a secondary concern. In the context of *this* type of contemporary liberal theory, republican arguments – and their attempted empirical validation in research – do not so much represent a project of openly 'refuting' liberal causal assumptions. In stead, or so I argue in the Conclusion of this thesis in a discussion of Rawls, they are ways to uncover and thematise unstated assumptions that *are* made, or have to be made by liberal theory. And more generally, they provide an occasion for a critical discussion of the several ways that the attempted isolation of 'normative' theory from empirical assumptions and empirical research may have to be less complete and to have a less promising future than assumed by its proponents.

5. A Space for Argument - Not a Theory

I shall argue the usefulness of distinguishing analytically between four aspects of the fragility of liberty theme. The development of these *dimensions of the fragility of liberty* is at the heart of my thesis. Their reconstruction is an attempt to improve and clarify our theoretical vision in a literature which is in need of it badly. Thus, I submit that the first fragility of liberty concerns the need to institute, preserve, and protect the *artifice*. This is about the very existence in time and space of a republic and its legal and political institutions and the particular status (rights) that citizens

45. See Dunn (1990a;1993).

46. But see also Parekh (1996:503-18).

enjoy inside it. Another dimension concerns the fragility of political *space*. This is the trust, tolerance, and reflective potential that makes up republican 'civility', and which is both, in certain ways, a component of *libertas*, and part of its condition. Thirdly, the very content of *libertas* is to some extent a contingent and historical matter of the more or less reasonable concord that can be reached as an outcome of what I call, for want of a better term, *political autonomy*. Finally, the resolve and motivation to realise common liberty in a state, making necessary sacrifices, and doing so in co-operation with different others, is a contingent outcome of the generation of concrete *solidarities* and the thematisation of *civic identities*, i.e. republican *patriotism*. Each of the four dimensions is the repository of a range of different, occasionally conflicting, republican arguments, invented in widely different historical circumstances that are more or less remote from modern political imaginations.

It is important to stress that I do not propose a republican *theory*. Such a theory, or such theories, could of course be constructed by developing one or more of the republican themes. Elements towards republican theories of trust, revolution, constitutionalism, or patriotism might be found not just in the work of the republican authors discussed, but also in many relevant areas of social science literature. They include Putnam's work on social capital, Habermas' and Ackerman's theories of constitutional deliberation, work by neo-Durkheimian sociologists on political integration and solidarity, and certain forms of discourse theory, applied to the study of the construction of national identities. The normative intuitions that arise from such re-theorising of the republican fragility of liberty programme would in turn require a sustained discussion of, among other things, republican political *obligation* and a republican conception of political *membership*.

My limited remarks on the contemporary relevance of republicanism reveal the flavour of my own preferences. I am a very liberal republican, more at home with Tocqueville than Rousseau. But my aim in introducing republicanism as a contemporary concern is not to limit unduly the possibilities of theorising at the outset. An adequate appreciation of the diversity, the internal tensions, and the disagreements inside the tradition is a step towards reconstituting republicanism as a sophisticated and pluralistic field of discourse inside which political theory may - also - move.

If the more modest ambition of this thesis is to open a field for republican argument, what could at least be said about such arguments? We noted their empirical and causal nature already. If they are seen, as also noted, as competitors to standard political participation arguments they are in addition, generally speaking, chastened arguments. Civic activity is not for its own sake, although it may generate additional gratifications over and above its immediate instrumental point. And if such activity is necessary, it is also itself a fragile and precarious thing: contrary to what is commonly believed, republicans are *not* optimists on citizens' propensities to civic virtue.

Republican arguments are rational arguments too. They are so in the sense of assuming that citizens may appreciate that it is rational to be virtuous, in the straight forward sense of being related to basic *interests*. The contingency and legitimate local variety of constitutional settlements does not make republicanism value-relativist. The core of any historical concord of *libertas*, the 'point of it all', throughout the tradition remains the enjoyment of that protected sphere of inviolability and security which only accrues to the citizen. Whereas some republicans were also Christians who believed in natural law, we might on top of this add that the republican argument may typically be seen to start from intuitions like that of Turner who notes that "[h]uman beings are ontologically frail, and ... social arrangements, or social institutions are precarious".⁴⁷ It is this universality of the human predicament which is at the heart of republican citizenship.

Citizens in all sorts of ways may forget how to secure this value, or start to take it for granted. Particularly, they may be inclined to rely on the efforts of others, because it is only strictly speaking *collectively* rational to make sacrifices to secure it. They may also be blinded by ideology or by fear and despair to such an extent that they forget the primacy of the value or give up its pursuit from the start. And their resolve to secure their common liberty may have to be aided by identifications and images that dramatise their predicament. Even then, however, such identifications and images derive their value from, and may eventually be challenged by, the rational reference to the common good of *libertas*.

Finally, republican rationality also has a moral aspect. The call on citizens, whatever their specific motivations and the mechanisms of generating them, is a call in the name of duty, the duty to help sustain the political community one is oneself a part of. And although republicans, with a few exceptions, realise that values are plural, normative deliberations indeterminate, and politics inevitably conflict ridden, rationality may finally be a *practical* or 'reasonable' one not just of give and take and compromise, but also of impartiality and enlarged minds.

After these general introductory remarks follow two sections dedicated to a discussion of a number of methodological themes which pertain to republican historiography and to the practice of history of ideas generally.

47. Turner develops the point that "we can, in the absence of natural law, avoid sociological relativism through a reinterpretation of philosophical anthropology to assert an ontology of rights in the claim that human frailty is a universal feature of human existence. This can be seen as a variation of Barrington Moore's thesis ... that while happiness is notable for its diversity, misery is characterised by its unity". Technological developments have not, in a certain sense, made life less precarious. And "[s]ocial life is characterised by its risk, by the instability of social relations, and hence by the precarious nature of trust" (Turner 1993a:181, 184). See also Benhabib's remarks on Hannah Arendt's "anthropological universalism" (Benhabib 1996:196).

II

6. A Note on the Study of 'History of Ideas'

This thesis primarily deals with the history of ideas. Until relatively recently - some time in the sixties - it is perhaps fair to say that most practitioners of the subject were relatively unconcerned with a range of methodological and philosophy of science related questions regarding what they were *doing* as they approached classical texts. At any rate, this has been the claim, not unsurprisingly, by the generation of historians of political ideas, many affiliated with the University of Cambridge - above all people like Quentin Skinner, J.G.A. Pocock, and John Dunn⁴⁸ - which came after them. These scholars argued that the failure to attend to such issues had led to forms of history of ideas - in positivist and value relativist writers in the vicinity of post-war political science, often practising the 'Whig history' of American functionalism (e.g. Sabine), as well as in 'philosophical' writers wishing to restore the practice of conversing about the ageless nature of politics and the malaise of the modern condition, like Strauss, Voegelin, or Arendt - that were not really *historical* at all.

6.1. Quentin Skinner's Critique of 'The Orthodoxy'

In a brilliant and famously iconoclastic article from 1969 Skinner advances a wealth of examples to dismiss a large part of his predecessors' "orthodoxy" as guilty of a whole range of anachronisms arising from the wish to concentrate on "the text itself" and from the failure to consider its conceptual, ideological, and strategic context. The notion that the very point of the study of historical ideas is to demonstrate their 'continued relevance', as comments and answers to 'timeless' questions, is linked to the belief that the text speaks for itself, outside of its context, and to the concentration on a classical canon of great works which are universally presumed to contain many such comments and answers. Above all, to Skinner, this ambition reflects a failure to appreciate the manner in which the reader is caught in an unacknowledged 'mind set' or 'paradigm' - which he cannot or does not seek to bracket, exactly because it is unacknowledged, just as it is unacknowledged that each classical interlocutor is similarly situated in a universe of conceptual meanings, references, and political concerns.

Skinner highlights several typical 'mythologies' of anachronism. The 'mythology of doctrines' assumes the existence of certain 'eternal' doctrines to which classical authors are assumed to contribute, leading to such errors as converting scattered remarks by authors into 'doctrines' that are not really there, and which were never

48. Dunn (1980); Pocock (1971b; 1980; 1985b), essays by Skinner (and by his critics) in Tully (1988a), several essays in Rorty, Schneewind & Skinner (eds.)

intended; to the attribution of doctrines to a writer that the writer *could* not have had (because the concepts and political awareness of a problem were not at all available in his time); to tracing the morphology of a doctrine through history in such a way that it becomes hypostatized into an entity that writers did or did not 'discover,' 'hit upon,' 'forget,' or perhaps 'anticipate' or only 'develop' in an embryonic manner; to *criticise* authors for not coming up with a bid for a doctrine – even on topics which were clearly irrelevant at the time (voting, public opinion, race relations); or to attribute views to them that 'they would have had' – always assuming that there was in fact, and must have been, *an intention* to state some view on these matters.

The 'mythology of coherence' is the exaggerated attempt to look, by reading a work over and over, or by sampling elements from all over the work of an author, for a unified and rounded presentation, even when this involves ignoring shifts in an author's work; criticism for lack of such coherence; ignoring open statements of intention actually made by an author; insisting that understanding of an author is necessarily a deep matter of 'resolving contradictions' and overcoming 'obstacles' (rather than assuming that they may indeed just be contradictions); constructing and attributing beliefs and doctrines which are sufficiently general to include all an author's (contradictory) statements; or finally assuming that an author was persecuted and prevented from writing what he wanted, thus requiring us to 'read behind the lines'.

Finally, even to historians of ideas who are determined not to assume the existence of eternal doctrines, defining their subject matter, Skinner sees other dangers. One is the 'mythology of prolepsis', or the tendency to attribute an intention to an author in terms of the significance that a text came to have 'for us' (Rousseau's responsibility for 'totalitarianism', Machiavelli's intent to found a 'modern' way of looking at politics). Another is the 'mythology of parochialism'. Here historians of ideas attribute a cross-historical likeness to arguments and concepts whereby they assume one text to 'refer' to another, or even 'influence' each other, although the necessary and sufficient causes for this to have taken place are not at all investigated. Or, the historian conceptualises old arguments, concepts or values in terms of familiar contemporary meanings, which are in fact misleading and could not even have been understood by the authors.⁴⁹

Readers familiar with these matters will have noticed that the stated ambitions of this thesis, at first sight anyway, seem about to court *some* of these dangers. At any rate, they do not completely conform to the chastened guidelines laid out, later

(1984).

49. Skinner (1969:3-30). Before laying out his own alternative speech-act contextualism, discussed below, Skinner also distances himself from a variety of more structuralist views.

on in the above article and in later works, by Quentin Skinner. In fact, Skinner has modified some of his early statements, admitting that in some respects "I went to far".⁵⁰ However, in light of the fact that I owe my substantial point of departure in this thesis to Skinner (the existence of 'negative' republican liberty), and as Skinner's is no doubt the most sophisticated statement in a wider range of contextualist historiographic positions, it is relevant to note where I broadly agree with Skinner, where my approach signals a difference of emphasis and concern which does not necessarily involve a conflict with his views, and finally on which points I am sceptical.

It should be noted that what follows is confined to a discussion of a number of key elements of Skinner's position, only mentioning other authors in passing, although debates on what the history of ideas is and how it should be done make up a small library. Also, they are preliminary and cautious remarks in a thesis that was never planned to be much about methodology, for which the author has had (too) little taste. This said, in as far as I do history of ideas in a certain way, I cannot escape the fact that this constitutes a separate, methodological contention of this thesis. To some extent my differences with Skinner is a matter of my use of history of ideas *for something different* than he does (a purpose which I claim is *also* legitimate). But apart from this, my views also carry certain substantial consequences for specific interpretations of authors where I, after all, place a different emphasis than he – regarding the distinctiveness of republicanism and its degree of incompatibility with old and new liberalism, and doctrines of *rights* more specifically - suggesting that *his* methodology leads him to overstate a point.

6.2. What to Do with Historical Ideas – in their Context...

Skinner's 1969 article, apart from its just and not so just criticisms of past practice in his field, was a first statement of a larger project which amounts to a specific purpose in concerning oneself with classical texts.⁵¹ Citing his Cambridge friend John Dunn, it was first of all to recover, as far as possible, "the historical identity" of works, i.e. of understanding what was the meaning of a text, or parts of a text, including small parts like concepts, in its contemporary context, and secondly what the author of a text 'was doing', attempting to bring about, in offering the text to his readers. I have a great deal of sympathy with this kind of program, and also with some of the methodological guidelines that follow from it. Indeed, Skinner's own practice of parallel reading of the ideological context constituted by obscurer tracts and pamphlets of a period, has set standards that are difficult to match. Luckily, his efforts and those of many others have generated a high quality secondary literature, which has made the task easier.

50. Skinner (1988:283).

51. Very usefully summarised by Tully (1988b).

Much more than Skinner polemically grants may probably be gained simply (except that it is not so simple) by studying texts more carefully, attending to the ways in which a concept is used by an author and resisting the notion of each text as a coherent bid for an 'eternal' doctrine. This said, it is certainly relevant to look at the conventional use of language in a period in order to understand which descriptions of activities or states of affairs concepts denote, which aspects of social reality they refer to, and how these are typically evaluated.⁵² Indeed, the following pages contain many attempts to rescue arguments and standard uses of concepts from their anachronistic reception, e.g. as 'well-known' republican ideas. To take two examples, I disassociate the concept of self-government from rationalist connotations of the Enlightenment and of contemporary democratic theory; and I stress that the early use of 'natural right' had a range of connotations, that these changed over time, and that they did not generally entail radical self-ownership, self-sufficiency, or a fixed normative content.

This is not to say, and Skinner cannot be accused of saying, that the meaning of a text is *determined* by its context - although for reasons noted below, Skinner leaves less space for the author than I am inclined to do. The identification of conventional meaning is the first step to consider how meanings may be changed or challenged in a work, let alone how meaning may be generated by emphasising only a subset of a period's available values and arguments. Thus, the second part of Skinner's program is to attend to what kind of *action* an author was undertaking, i.e. what type of message he meant to convey, and what form of accomplishment he was after (which is not the same as the *actual* significance that a text came to have in a context, as it was read and disseminated). We may better understand such choice or change of conventional usage in a political context (of power, alliances and political opportunity - but also, I would add, of new causal analyses of feasible projects and political arrangements), including the manner in which a text is meant to dispute, confirm, or subtly alter such usage. Conversely, the change of conceptual emphases is also a way to get closer to the political projects of an author, his allies, and his time. Such *political intervention* by conceptual contestation is particularly evident, in this thesis, in the ideological landscapes of the American constitutional debate.

Skinner's project also contains a dynamic and explanatory element. The analysis of conceptual repertoires is employed in a research program which aims to *map* the dissemination, change and enforcement of ideologies, including the strategic textual points of such developments; the (partial) *explanation* of historical texts in terms of the constraints and enabling of available discourse; and even the way that such ideology confines and enables wider changes in general social discourse and

52. These three aspects are developed in Skinner (1989).

political action, and is hedged in by political and material factors in turn.⁵³ Despite its obvious relevance for the field, as for politics and social science generally, I do not have such aims here. Occasional reference is certainly made to ideological pre-conditions, to influential works, and to available forms of argument (e.g. the forms of discourse which were 'exported' to America), but all in a quite general and didactic manner, compared to Skinner's ambitions.

6.3. ...And in their Relevance 'for Us'

In a general way I too wish to preserve the texts in their historical and authorial context, as they 'were' and 'were meant'. I recognise (as does Skinner) that we may only have access to a part of these meanings, that this difficulty increases with remoteness and lack of data, and that any interpretation, as always in the social sciences, is liable to revision. However, I do aim to refute some assertions about points of meaning and authorial intention, and I do make claims of the sort like 'whatever else, or more, or more specific, is the meaning of this text and its author's intention, it is *not this* meaning, but rather *something like this*'. Hence in particular my critique of Pocock's and others' interpretations of republican notions of liberty.

But I have further claims about the legitimate use of history of ideas, and these set my project somewhat apart from Skinner's. The point of studying historical texts is also, I contend, their substantial significance *for us*. It is a primary aim of this thesis – hence its structure, long historical sweep, and attempt at syntheses in Chapter 8 – to excavate a species of political argument which has contemporary importance. To explain what I have in mind, let me start by noting two arguments, made by Skinner himself, each of which ties historical accuracy to contemporary relevance.

First, I agree with Skinner that preserving the 'identity' of arguments and conceptions of politics, acknowledged to have been influential and seriously debated in another age by individuals of high intellectual capacity, is a means of looking at one's own political arrangements with a detached and critical eye. In particular, it is a way to appreciate the large degree of historicity of contemporary conceptions. Skinner uses his own work on republicanism to show that negative liberty is not necessarily tied to individual (natural) rights⁵⁴ (and that we shall miss this if we read the republicans as necessarily contributing to a 'doctrine of liberty'). Only, where Skinner stresses the alien terms of this understanding in the context of contemporary liberalism,⁵⁵ I would see *this* as an example of a recognisable *value*,

53. Tully (1988b:12-16).

54. Skinner (1988:287).

55. In order to do so Skinner has to erect what looks like a straw man (discussed in the Conclusion) – contemporary liberal rights discourse as *necessarily* unconcerned with, indeed conceptually incompatible with, rights and obligations.

surrounded by a somewhat *unfashionable* (though not unheard of) type of civic ideals, and linked to a number of somewhat *forgotten* (though hardly incomprehensible) assumptions of preconditions.

Secondly, history of ideas provides access to the *genesis* of our own concepts out of those of previous eras. It enables us, not only "to illuminate the changing applications of our key concepts" but also "to uncover the points at which they may have become confused or misunderstood in a way that marked their subsequent history."⁵⁶ Whether such development is evidence of 'confusion' or of political contestation under changing circumstances, this thesis makes similar points. It does so as regards the eventual impoverishment of rights language in a capitalist society, the nationalist 'pollution' of *patriotism*, and the loss, in conceptions of citizenship, of emphases on bounded membership and duties. To my mind, such analysis of conceptual transformation shows us that we *may* at times learn something from the past, as when the narrowing of conceptual meanings also refers to values and understandings of politics which were prematurely given up.

This takes me to a third constructive employment of classical texts where Skinner and I, at the very least in degrees of emphasis, go different ways – although Skinner has modified his views. In 1969 Skinner claimed that "the classical texts are concerned with their own quite alien problems" and that, while there might be "apparently perennial questions, if these are sufficiently abstractly framed"

whenever it is claimed that the point of the historical study of such questions is that we may learn directly from the *answers*, it will be found that what *counts* as an answer will usually look, in a different culture or period, so different in itself that it can hardly be in the least useful even to go on thinking of the relevant question as being 'the same' in the required sense at all. More crudely: we must learn to do our own thinking for ourselves⁵⁷

In the 1988 article Skinner admits that "[m]y way of putting the point appeared to deny the obvious fact that western traditions of philosophy have contained long continuities, and that these have been reflected in the stable employment of a number of key concepts and modes of argument". Yet, while recognising "the long-standing character of many of our philosophical disputes", he still criticised "the practice of abstracting particular arguments from the context of their occurrence in order to relocate them as 'contributions' to such disputes."⁵⁸ Well, doing something like this, or rather preparing the ground for doing it (Chapter 8), is one thing that I intend to do.

56. Skinner (1988:28).

57. Skinner (1969:52).

58. Skinner (1988:283).

We should certainly use Skinner's methods and other tools in order not to distort the identity of classical texts. The interpretative history of republicanism bears ample testimony to how present-day conceptions of value may cloud our visions. Many historical conceptions no doubt *are* and will remain locked into quite alien horizons of political controversy. Yet the uselessness of connecting values and figures of argument from previous periods with contemporary ones can hardly be established *a priori*. Skinner significantly loads his terms. Who, nowadays, would expect history of ideas to be a "solution to our *immediate* problems" or assume to "learn directly from the classical authors by focussing on their attempted answers to supposedly timeless questions"? Who would believe, as Leo Strauss and some others apparently once did, that all important political problems are "perennial", or that conversation about them, to the extent they exist, is an unmediated meeting of minds across the centuries? Why not in stead assume that political problems and their connected concepts and arguments may be more or less general? That those who seek illumination from the past may expect to find not "timeless" debates about a fixed number of abstract problems, but *sometimes* interesting continuities, re-occurrences, and historical parallels on a number of questions and answers in the context of often recognisable, but somewhat different, universes of human value? That this is possible even as we try to recognise as systematically as possible the divergences in range of application and the details of connotation? The suspicion that such restatement *necessarily* involves distorting them beyond recognition through their assimilation to 'our' unimaginative political universe surely underestimates the great variety of *contemporary* vocabularies of political value which are readily available, or at least accessible, as resources of translation.⁵⁹

Skinner's scepticism reflects views on the discontinuity of meaning of most political concepts. It is impossible to write 'a history of concepts' because "progress, equality, sovereignty, justice, natural law, and so on and on" have been *used* by a great many authors, in different historical contexts, with different political intentions. One of his examples is Machiavelli's *virtu*. Previous interpreters have tried in vain to translate it to known contemporary versions of *virtue*, have misleadingly claimed that he used it in many senses, and that its use was simply confused – all without seeing that *virtu* meant the qualities "moral or otherwise...most conducive

59. Skinner (1969:51,53; 1988:283). To take an example, understanding Rousseau's conceptions of 'citizen' and 'equality' requires examination of authorial intention and context. Neither correspond to values widely held today. Yet, some structural aspects of the moral sociology of Rousseau have proven applicable to quite different circumstances. The connections between social homogeneity, equality of status, and political stability are familiar to analysts of nationalism and national identity. Re-reading Rousseau we gain access to a diversity of orchestrations of a relationship between the individual and the state which, if not 'perennial', surely has relevance beyond Rousseau's own time, let alone his authorial intentions.

to military and political success," as often linked, we may add, to Machiavelli's argument that such success was also a precondition of founding and maintaining liberty. But Skinner's point that no modern term captures this intuition is hardly controversial. It is unclear why we would wish to restrict ourselves to a single term to denote a complex idea or whether past interpretative scholarship invariably aimed at such crude 'translation'.⁶⁰

In fact the idea in question does not strike one as alien, but relatively understandable, as is – with a degree of imagination and aided by competent historians like Skinner – the universe of value to which the concept belongs. Certainly conceptual meanings of terms change, and certainly we should not assume that all writers necessarily contribute to perennial concepts, let alone to the specific structure of such concepts which present theory has fixed upon, and certainly some classical concepts may be so different that lengthy expositions are required. Skinner's stress on concepts as strategic weapons in diverse circumstances⁶¹ leads him, I believe, to overemphasise the necessary diversity of conceptual meaning. It is after all an empirical matter to what extent, and as regards which types of human values and political conceptions, continuities and stability exist.

I happen to believe that the structure of Machiavelli's concept may be employed in a generic analysis of recognisably similar types of *arguments* about civic virtue – i.e. those dispositions that, as a matter of a temporal-practical analysis of politics, are needed to secure common liberty. These arguments have a certain structural stability which corresponds, I believe, to continuities in basic political experience. It is quite clear that the content (dispositions, types of practice) of this concept changed, as did assumptions of its forms of generation and proper spheres. Some uses of 'virtue' took it out of politics altogether, others gave 'economic' and 'religious' virtue a political meaning, and so on. I analyse such developments in some detail to highlight the flexibility and the continuity of historical conceptualisations of what it takes to be a good and useful citizen and what the defence of liberty requires, over long stretches of historical time. A way to describe these developments is to speak of types of *arguments* as constituting the conceptual core around which conceptual variation and change may take place, with some uses of 'virtue' (Christian virtue in most historical settings) departing from this core, and with some new *terms* still sharing it (manners, civility).

I may not be so guilty of anachronistic history of 'ideas' after all: Skinner scorns those who simply seek those 'answers' in the past which contemporary orthodoxy

60. Skinner (1969:39; 1988:253, cp.244-45).

61. "[A]s soon as we see that there is no determinate idea to which various writers contributed, but only a variety of statements made with the words by a variety of different agents with a variety of intentions, then what we are seeing is equally that there is no history of the idea to be written, but only a history necessarily focussed on the various agents who used the idea, and on their varying situations and in-

provides them with already. I am interested to begin with the *variety* of *diverging* answers – although I maintain the relevance (and certainly also investigate the occurrence) of a broadly similar *question*, regarding conditions of liberty. As stressed by Albert Hirschman, the fact that previous periods asked recognisable questions (such as how to avoid religious fanaticism) in quite *different* circumstances (before the advent of capitalism or the modern nation state) and often gave surprising or paradoxical answers (for instance that markets are civilising rather than socially disruptive) may be a theoretical inspiration to us.⁶² Sometimes the structure of the problem context may exhibit interesting parallels, or the *lack* of a parallel may remind us of the non-obviousness of present context. Again, both possibilities are evidenced when we look at American constitutional debate in the context of present day European integration.

I also feel an affinity with Isaiah Berlin, who showed that original insights (and not merely the strategic intentions) of an author come alive to us in a historical and biographical context, out of which it may *then* be lifted for us to ponder – exactly in order to become wiser on the plural (but still understandable and hardly infinitely diverse) political universes of value whose difference we should try to preserve in thought.⁶³ Specifically, Berlin's pluralism may also be applied to recover original political universes in the sense of views of the political world and its conditions, e.g. conceptions of civic motivation, the structure of vice, or the working of political architecture – all parts of an attention to the *content* and structures of arguments which I am not sure Skinner takes entirely seriously in his concern with strategic intentions and historical meanings.

7. How to Do History of Ideas

7.1. Some Remarks on 'Method'

My *purpose* in the use of the history of ideas has some bearing on the way that I go about the reading of individual texts and not least on how my findings are presented.

My own emphasis on the *content* of *argument* leads me to stress – also in the selection of authors – what is *different*, *original*, and (thus) *interesting*. I feel at liberty to emphasise or enlarge aspects of a work which relate to the problem at hand. At times arguments to this effect are not the main concern of an author, indeed it may even be a point that what he says presupposes the self-evidence of the argument. Moreover, where details of an argument assume a relevance 'for us' which, for good reasons, goes beyond the imagination of an author who pronounces

tentions in using it" (Skinner 1969:38).

62. E.g. Hirschman (1977).

63. On Berlin's value pluralism, see Lukes (1994).

somewhat less, or less directly, on a matter than 'we' would have wished, there is occasionally a higher degree of textual dissection and interpretation than elsewhere (this may be the case in my account of Madison's ideas of constitutional deliberation in Chapter 5). The interpretations that I offer no doubt become more contestable the more that this is the case.

Secondly, I place an emphasis on the larger, 'material' and 'structural' historical context. Relative to Skinner, who emphasises the important role of *ideological* contestation of concepts as related to alliances and struggles over power, I also draw attention to the constraints and possibilities of the *problem situation* which presents itself (although of course interpreted and significantly contested by historical actors) for instance with the rise of a centralised state, in the context of post-revolutionary federal consolidation in the 'large republic', or with the advent of a socially levelled, capitalist society. In new circumstances, new political problems presented themselves and, particularly, old ones presented themselves in novel ways. Thus, I emphasise the contextually different – yet inside each their context relatively stable – conceptions of *dangers* that threaten common liberty or corrupt the civic resolve to secure it. I also note how new types of situational pressure and argumentative constraint were put on proponents of old ideals to explain why they were still valid, or to restate them to be so. That the thesis takes a (very) long view, occasionally skipping a century, jumping from country to country and across the ocean, certainly renders this approach necessary in order to avoid anachronism. But it is also productive as a way to appreciate that *diversity in continuity* of arguments which the thesis wishes to preserve.

Thirdly, in a way that Skinner does not much do, I often place readings in a *very wide* historical context. While the identification of conceptual conventions of a period is important, I find it legitimate and important to draw contrasts and to accentuate continuities of *argument* between quite different periods (i.e., in Chapter 5, Greek and Roman conceptions of virtue compared to virtue language in America) even though the concepts are only partly the same, let alone the words employed to denote them. I also note how doctrines 'start' or 'are developed' and reach a more 'sophisticated stage', without thereby implying any claim, criticised by Skinner, about ideological influences or teleological movement of spirit.

Fourthly, I should note my guiding intuition of *starting* with an presumption of finding some version of certain types of arguments in a text. If Skinner had a point in warning us about looking for the familiar, since his 1969-article the pendulum has swung towards a position which (over)emphasises the notion that what we find (to the extent that we can even understand it) will belong to an alien universe of value.⁶⁴ I do not deny, indeed I highlight, the vast difference between, say, the con-

64. In the context of ancient Greece, one may compare the accounts of MacIntyre (1985) and Rahe (1992), with that of Hansen (1991) – which indeed I do in the fol-

ception of 'the person' or 'a good life' in Aristotle and Thomas Jefferson. What I suggest, without developing it, is that certain core political values, along with certain types of concerns about securing them, may constitute politico-anthropological 'universals' – points of convergence for political disputes which human societies at a certain level of material development and structural differentiation will exhibit to some degree.⁶⁵

Finally, despite my basic sympathy with Skinner's speech act approach, I also have some reservations. In a quite legitimate way Skinner's purposes of intellectual history narrow his vision. There is more, in some authors much more, to authorial intentions and projects than rhetorical efficiency and strategic manoeuvring inside a space of conceptual convention. Tocqueville's work clearly has to be placed in the context of both his anti-Jacobism and his critique of the Ultra-royalists (and of his wish to befriend the intellectuals of his period, to have a political career, and to be famous), and many of his concepts and preconceptions were shared by the liberalism of the *doctrinaires*. But in writing *Democracy in America* he also tried to reach a better understanding of a whole range of complex phenomena, connected to what he thought was a novel political condition, and to offer what he truly thought was a better vision for the future of France, all knit together with a distinct normative vision of new values and virtues to be cherished, and old ones to sacrifice.

Also, for the understanding of a work of any complexity, such as that of Rousseau, mapping the conventional significations and applications of concepts and their strategic use only takes us part of the way. They may be entangled in complex arguments and visions of politics, not all of which the author has been able to state with complete coherence or even clarity to his contemporaries, let alone to us. Interpreting these interconnected *arguments and visions* may be a somewhat more laborious and complicated affair than Skinner suggests. My readings – with *their* purpose of uncovering details of argument rather than 'mere' conceptual meanings and authorial strategies – are for such reasons somewhat more concerned with 'herme-

lowing chapter.

65. Having already quoted Turner, let me note Berlin's recognition (in the midst of his value pluralism) that there are "if not universal values, at any rate a minimum without which societies could scarcely survive", among which, for practical purposes universal, human aspirations was some "area of personal freedom" which cannot be given up "without offending the essence of human nature" Berlin (1969:126; 1990:18). Physical security, absence of arbitrary power, avoidance of fear, and some modicum of material welfare are also likely candidates. Moreover, in all discourse concerning regulation of collective arrangements in any organised community, it may be speculated that conceptualisation of the preconditions and the experience of contingent enjoyment of such values may well parallel those 'practical' descriptions of everyday life-maintaining activities where some anthropological evidence suggest the existence of much the same structure of concepts (Lukes 1982:269-70).

neutical', work-internal interpretations than Skinner's, although I share his misgivings about overly inventive and intervening reinterpretations.

7.2. Relativism, Concepts, and Discursive 'Paradigms'

Some of the points made above connects to the more general reservation about Skinner's methodology that *discourse* for several reasons may well be less constraining than he appears to believe.⁶⁶ To avoid confusion, Skinner is not really a *relativist*, in any of several ways that this has been and remains fashionable.⁶⁷

Skinner does not believe, like Rorty,⁶⁸ that, conceptually speaking, the past is such a foreign country that we cannot understand it at all (or only, as claimed by some, by emerging ourselves in the self-contained language games of different periods or alien 'cultures').⁶⁹ Although he does not believe *any* concepts and beliefs may strictly speaking be said to be "forced upon us by the world", in such a way that *we may be sure* that some parts of reality is represented to us all in the same way (allowing some term by term translation), providing we apply our contextual scholarship with care, this does not "prevent us from learning alien terms, and in consequence finding out what discriminations they are used to make", using "the resources of a given language such as English." In order to have much success with this, we must hope for, and Skinner does concede finding (even, in the 1988 article, at the level of some basic political concepts) "considerable overlap between our beliefs and the beliefs of those whom we are trying to investigate". (But he advances no opinion as to what reasons we may have for entertaining some optimism about the degree of this overlap).⁷⁰

66. Despite Skinner's emphasis on strategic use of language, he also notes that his approach

leaves the traditional figure of the author in extremely poor health. Reiterating, defending, underpinning commonplace insights as they generally do, individual authors can readily – perhaps too readily – come to seem mere precipitates of their contexts. It is certainly an implication of my approach...that the idea of discourse, not individual authors, becomes the main focus of attention. The historian primarily studies what Pocock calls 'languages' of discourse, and only secondarily the relationship between individual contributions to such languages and the range of discourse as a whole (Skinner 1988:276-77)

67. Nor am I. I broadly share the type of middle ground position defended by Steven Lukes in a series of articles (1977a; 1977b; 1977c; 1982).

68. Rorty (1979).

69. Winch (1958).

70. Skinner (1988:250-53), cp. the somewhat more realist position of Lukes, already cited, and (more realist still) of Hollis (1982). It follows, and his entire approach indeed implies this, that Skinner does not believe that our attempts to understand the utterances of the past are simply a projection of our own categories inside which we are somehow trapped (a position which would make nonsense of notions of reflective criticism, revision, and conflict inside the culture of the inter-

Moreover, Skinner stresses that, in order to be able to understand the meaning of our ancestors' beliefs, we must assume some shared standards of rationality or "assumptions at least about the process of belief-formation itself", including non-contradiction and logical inference - although this does not entail that what we now know to be false could not in a context be a rationally held belief, and although failures or deliberate departures from rationality and consistency cannot occur.⁷¹

Finally, Skinner denies the charge that we cannot hope to have any access to the intentions of authors at all, or that such an ambition would imply the reckless return to "the mysterious empathetic process" of pre-Gadamer *Einfühlung*, famously debunked by that author.⁷² Noting that it may well be impossible to recover intentions with some texts and utterances and that all attempts to recover intentions will be revisable in the light of alternative evidence, he insists on "the logically behaviourist, essentially Wittgensteinian argument" that intentions must be assumed "publicly legible" in a given context, where certain conventional meanings of concepts (themselves possible to establish) are evoked in certain situations, where certain agents may be hypothesised to have certain interests, beliefs and strategic motivations, subject to "further corroboration". Again, to believe with Derrida (whose "unhelpfully hyperbolic" reasoning takes some flak), that past intentions are inaccessible in principle would "render meaningless a whole range of practices extending from the conducting of orchestras to the assessment of criminal responsibility."⁷³

Having dispensed with these potential misunderstandings of Skinner's position, I do have some misgivings about the degree to which his methodological framework causes his 'traditional figure of the author' to disappear. When Skinner stresses that authorial innovation - over and above repeating and combining conceptual uses already employed elsewhere - is merely a question of marginal change of conceptual reference, sense, and loading, he overstates his case.

First, as a theoretical point with which I'm not sure Skinner in fact disagrees even though he seems to ignore its significance, our capacity to reason and project our reasoning in speech or writing is by no means only a question of our available concepts - also not in Skinner's sense of including the (gradually) renewed conceptual meanings with which we intentionally avail ourselves. The turn to language in political theory was certainly a timely reminder that concepts are not neutral tools, a matter of mere convention or convenience. They are in stead ways to bias arguments, deliberately or undeliberately excluding some areas or representations

preter), although he certainly stresses that *escaping* our categories requires a level of self-reflection that we often lack.

71. Skinner (1988:257).

72. Gadamer (1975).

of reality (or accounts of its potential transformation), some normative intuitions, and some political aspirations from access to 'good concepts' like justice, democracy, or freedom.⁷⁴ But it is *only* a bias, its strength and effectiveness depending on the concept in question:

Even as we accept (or as our equally rational ancestors accepted) a specific sense, reference, and loading of a term, it is still possible to *argue*. We may doubt whether such a generally good thing as democracy should be sought under all circumstances. We may question whether the relationship between, say, liberty as some species of non-interference and on the other hand other values (including more basic values like the equal dignity of all persons) is really the one claimed by a theorist, perhaps suggesting that the theoretical account into which the concepts fit is partial or even incoherent – all the while accepting his terms (say, those of Nozick). Finally, we may ask whether the causal account of politics assumed by a certain conceptual bias is in fact plausible, irrespective of whether we contest the meaning of the concept (there is both the possibility of reinventing 'socialism' as 'a fully democratic welfare state' and saying that it is a wonderful ideal, but impossible to realise). Although political arguments are very much about conceptual dispute they are also – no doubt usually at the same time – a question of using given concepts in different arguments. The exclusive focus on concepts may indeed make us lose sight of the argument.

Secondly, I believe in particular that the question of empirical reference and causal accounts presumed in a conceptual argument is important for our appreciation of texts. Skinner argues that the question of the 'truth' of textual utterances is trivial (not, of course, that it cannot be decided 'by us', let alone 'at all') and he may often have a point.⁷⁵ But as noted I stress the way that authors, more or less close to each other in time and independently of the degree to which they shared the same concepts, often quarrelled exactly about political practicability and 'realism'. A history of ideas designed to ridicule the faulty political science of the past would certainly look peculiar. Yet, we may achieve a more differentiated understanding of texts which leaves more space for the author and for the possibility that he may tell us something interesting if we enter this empirical variable of contestation as well: At least as interesting as what authors meant by 'rights' are the, of course related, questions of which political mechanisms and causes threatened or furthered their safe enjoyment, and which good reasons (apart from strategic interests and political expediency) they had for advocating one view or the other.

This, thirdly, connects to the 'realist' intuition to whose methodological significance I have already alluded, and where I also depart in some degree from Skinner.

73. Skinner (1988:279-81).

74. A lucid account of 'essential contestation' of concepts is Connolly (1983).

75. Skinner (1988:256).

There is, I believe, a way in which the experiences of real political affairs in their historically evolving actuality, as well as arguments about these matters by historical actors, are not only irreducible to the concepts these actors use (although they are certainly not independent of these concepts), but in which they represent a long historical continuity 'beneath' the employment of a specific language. As noted, though hardly argued, I believe certain political experiences of the contingency of some basic values are of this nature, and it is a hypothesis of the thesis (to be investigated) that the republican version of this contingency also manages to thrive under a range of conceptual circumstances.

Thus, to some degree it may also be possible to talk about the same thing, although we use slightly different concepts, let alone terms, and the fact that we use different concepts and terms may well prevent us from realising this. Tocqueville continued a long tradition of republican arguments about patriotism. He invented a new word, and his *concept* was not quite the same (more reflective and 'liberal', referring to slightly different activities). However, the structure of the arguments (i.e. that patriotism was tied to the experience or memory of liberty, that it had a rational core, and that it was not unquestioning) was not so novel. Yet, he *thought*, echoing Constant and others, that it was. Indeed his own 'reflective patriotism' was expressly invented as a contrast to that 'patriotism' which had been so thoroughly discredited for instance by the rhetorical moves of David Hume.

Indeed, Skinner's version of the republican history of ideas may illustrate a similar point, and this is an example also of how his methodology leads him to substantial claims that diverge from mine. In emphasising that Machiavelli had a conception of negative liberty which was 'preliberal', not just in the sense that it was tied to participation in 'self-government' (with this I concur), but also in the sense that this was conceptually quite discontinuous with the language of 'rights', he makes too much of the fact that Machiavelli did not employ the terms of *diritti* and *interessi*. Apart from the fact that Skinner's 'rights' appear to be coloured by his (mis)understanding of liberal rights discourse, and while Machiavelli's *concept* of liberty was of course different in the sense of being *pre* natural law ideas of universal rights of man, bestowed by God, there were also important continuities with for instance the rights discourse that emerged in America.⁷⁶

On the one hand, and apart from the noted obvious differences, there are clear similarities between the idea of the common liberty of the city (derived from the Roman concept of *libertas*, and prevailing in Renaissance writings) as a contingently specified set of areas of mutually guaranteed *personal* immunity of citizens, and on the other hand the civil liberty which Paine, Jefferson, and the Anti-Federalists associated with (the actual, secure) enjoyment of individual rights inside a territory. It is the same *type* of value – even if some of the rights (religious

76. Skinner (1988:287).

freedom and freedom of consciousness) are new. On the other hand, the way that American republicans tied the safe enjoyment of this value to political independence and to the willingness of citizens to be virtuous and vigilant is the same type of republican argument, corresponding to the same type of experience of the political condition that Machiavelli was also making.

This last point, fourthly, connects to my impression that Skinner underestimates the *degree* to which old and new discourses were internally ambiguous, heterogeneous, and mixed (even in the same authors). American authors who employed each their mixtures were quite capable of understanding diverging rhetoric. Indeed I argue that they consciously entered debates which were about much the same values, and presupposed, if not quite the same conclusions concerning the political problem context, at least similar assumptions about its structure. Moreover, in this particular debate there was a degree of give-and-take progression.

Connected sets of traditionally republican concepts like *virtue*, *corruption*, and *patriotism* could be used by figures like Hamilton to discredit old republican arguments, and they could become attached to new varieties of Puritan, 'capitalist', or Enlightenment-individualist discourse, inside each of which they could in turn be given more or less civic expression. Although Skinner would hardly deny that concepts are capable of a variety of applications and connotations, selectively sampled and emphasised, indeed that this variety is itself continuously contested and expanded, I believe he understates the degree to which this takes place. Clearly, not everything 'could be said' at any one time. However, the range of competing 'liberal' vocabularies which in each their way would seem to contradict republican political cosmology (in Chapter 4 I mention five: natural rights and state of nature, interests and institutional architecture, commerce and civil society, progress, and sympathy and moral sense) did not just constrain republican *arguments* but also, if to a varying degree and not indefinitely, enabled their reformulation in new ways.

7.3. The Meaning of 'a Tradition'

When I employ the term *tradition* to refer to republican arguments this reflects what I take to be their great historical resilience and continuity. It also follows from the above that I have in mind something slightly different than an idea of a conceptual 'paradigm', 'language', or 'discourse', when these are taken to mean that a way of thinking and writing about politics may be defined strictly at the level of continuity and independence of conceptual conventions. There may be different emphases, in writers like Skinner and Pocock who follow such criteria, as to what constitutes the defining range and connotative cores of concepts in such a 'language'. Both these authors accept or have come to accept that different languages may be combined to some degree – indeed Skinner has emphasised how the ideological strength of a

discourse is a function of its capacity to merge itself with other potent languages.⁷⁷ However, the emphasis I place on the way that conceptual use is ambiguous and open to reflective use in new ideological circumstances also makes me quite sceptical of methodologies based *purely* on the study of conceptual meaning.

Such methodologies help us to restrain our interpretations to *what could have been said*. But they are unhelpful if, as I believe is often the case, they prevent us from appreciating the high if not unlimited degree to which structurally similar *arguments*, which above all refer to the conditions of securing certain important *values*, may be stated in languages which include a high incidence of conceptual markers ('rights', 'progress') which belong to alien conceptual universes.

Republicanism If this is accepted – with the no doubt controversial notion that 'arguments' over basic human political experiences to some extent constitute a 'real' substratum below the level of concepts – it still remains to be explained why my particular delineation of republican arguments in 'a tradition' is better than competing attempts to do the same, including those of more conceptual authors. Let me answer in a series of steps:

To begin with, there is reason to note that academics debating 'republicanism' are not talking entirely past each other. Although moves in the debate are made by introducing hitherto neglected authors or in disputing the nature of the 'break' between, say, Aristotle and Machiavelli, or between both and the American writers, there is broad agreement on which authors 'we are talking about.' There is also agreement as to much the content of republicanism, including, I believe, at least the following: That we are talking about continuities of ways of conceptualising political forms which contain a popular element; which somehow aim at reflecting a 'common good' or balance between the aspirations of different political groups inside such forms; which acknowledge or stress the temporal contingency as well as the legitimate variety of such forms; which involve the valuation of some degree of 'participation' of various kinds in public life by citizens and the notion that exercise of such activities is somehow related to the (equal) status of these citizens; that neither these valued activities nor the 'quality' of the citizen are to be taken for granted – and no doubt more. It is also uncontroversial that the Renaissance expression of these elements is tied to a number of conceptual elements like *virtue*, *liberty*, *republic*, *common good*, and *corruption*, each of which get to have a long history. My delineation of the republican tradition takes place inside this shared understanding.

Secondly, all delineations of traditions are also *reconstructions* – hence the title of this thesis – in the sense that they have a deductive element. They are in the end

77. Tully (1988:15). Pocock has later admitted that *Moment* was to some extent "tunnel history" (Pocock 1981b:53).

traditions *for us*. Each contain – also those of Skinner and Pocock, although they may wish to deny it – a *search light*, constituted by what the interpreter, in the context of contemporary theoretical debates or personal inclinations, considers important. The definition of the 'core', the number of elements, how strictly defined, and to what degree it may be diluted or reformulated and still remain 'the same', these are unavoidably decisions of the interpreter – constantly visible in the following. Although one may be helped by natural 'clusters' of arguments in the texts, no focus on continuities in discursive configurations (Which concepts? How to delineate them? How continuous?) could alleviate this predicament. Defining a tradition in complete disregard of the conceptual continuities assumed by authors would certainly constitute circumstantial evidence of idiosyncratic readings. But the diffusion of conceptual use points in so many directions that choices amongst such continuities have to be made anyway, according to some criteria. As an example, although Hegel shared a good deal of the vocabulary and references of the tradition, his *arguments*, values, and entire understanding of politics is fundamentally different from those I have stressed as republican. Hegel *thought* he was in continuity with the Ancients, but wasn't really. Tocqueville who did not quite use the same words, and like many of the later writers treated took care to distance themselves from past authors, was in much more continuity with the latter's arguments than he believed was the case – hence he is included.

Thirdly, because of this *search light* element, any one author could be placed in different company, inside differently defined traditions, also if we do require *some* level of auto-coherence in conceptual use and mutual reference, however mediated and indirect. The interpreter might be interested in a quite different set of questions and values (such as specific conceptions of the person, ideals of toleration, or views on the just acquisition of property) which aligns some of my 'late' republicans with other ('liberal') writers of the Enlightenment.

Or one might wish to isolate a more narrowly defined civic tradition – for instance restricting 'republicanism' to views which also include a recognisable notion of the renaissance ideal of *vir virtutis*, and some correspondingly strong version of the way that politics is tied to the pursuit of human flourishing understood as manly 'greatness' or character. One might choose a short time span, keeping varieties and conceptual complexity of such ideas within a quite limited range. Or one might elect to include a whole variety of much later but arguably continuous ways that politics has been seen to carry its own intrinsic rewards in the form of the development or building of the self, or the acquirement of (collective) self-knowledge. As far as it goes Pocock's history of civic humanism which points all the way to the early Marx (and indeed to Hegel) is certainly a respectable *search light* - driven no doubt by views on the lack of contemporary outlets for such political experiences, views I do not share. Although I might have stressed it more *civic humanism* is hardly absent from the thesis, but I do think Pocock overstates its importance.

One might also, for instance from a communitarian standpoint, wish to widen the republican dimension of *patriotism* to include all statements about the importance of common identifications for political or national integration, or as morally valuable in themselves. If one were to start with Rousseau and look at various forms of nationalist ideology in the nineteenth century, including a whole range of Italian, French and German examples which I have not discussed, no doubt many similarities in arguments, assumptions, and value intuitions connect the subset of authors who maintain the reference in *patriotism* to common liberty with those who do not.

But despite this deductive element, fourthly, any delineation is not as defensible as any other. First of all, all search lights are not complementary (as when we say – emphasising or playing down different elements – that Tocqueville in one respect was ‘republican’, in another ‘conservative’, and in yet another ‘liberal’). Sometimes interpreters *disagree* about the central meaning of terms, arguments, and values in a given writer, and such disagreements may be indicative of broader incompatibilities in the representation of the common ground participators to a tradition allegedly share. My delineation of the republican tradition is broad enough to include many concerns. There is room for authors who connected the fragility of liberty to *vir virtutis* ideals and those who did not; for Rousseau’s ‘communitarian’ persona along with his standard republicanism; and for American democratic conceptions of self-government along with earlier republican history where talk of this value is an anachronism.

But I believe that Pocock’s use of civic humanism to delineate a republican tradition beyond the Renaissance stretches these ideals much too far. And I certainly argue that Pocock’s influential picture of the tradition is *mistaken in the sense that I claim – whereas he denies – that these civic humanist ideals were virtually always connected to the external, instrumental point of enjoying a species of negative liberty under law.*

Also, whereas Skinner has pointed our attention exactly towards this ‘liberty before liberalism’, I claim that his description of the tradition is *mistaken in the degree of discontinuity and incompatibility* he sees between this early republicanism and on the other hand (natural) rights-centred types of discourse *per se*, and indeed a number of other ‘liberal’ elements generally believed to define the limits of republican thought – a point discussed in a moment.

I further, and by implication, claim that various alternative delineations of republicanism (whatever valuable analyses they contain) are mistaken when they distinguish between ‘liberal’ or ‘instrumental’ republicanism and on the other hand ‘civic humanism’, assuming that negative liberty was only an issue in the former.⁷⁸

78. See Chapter 5, section 2.

I certainly dispute Charles Taylor's characterisation of the tradition in terms of a shared concern with liberty as collective self-expression of a people's *identity*.⁷⁹

Finally, while Phillip Pettit's definition of the tradition in terms of juridical (and social) *resilience* is illuminating in several ways, and although he describes important aspects of the republican value ideal, I believe the use of this ideal *per se* (shared by Locke, Hume, and Kant) – rather than arguments and intuitions about its fragility and the conditions of realising it – is *analytically unhelpful* because it draws a line of demarcation which makes most writers republicans; which fails to make sense of the critique of some of these authors by others who denied the importance of civic virtue; which does not distinguish between historical instances of republican city states and on the other hand those various privileges, protections, and 'liberties' of burghers or artisans that were enjoyed in many places throughout the Middle Ages, but without political rights or duties; and which finally *completely* cuts the reference to traditional understandings of what constitutes republican vocabulary.⁸⁰

These critical contentions go beyond mere convention. They are based – or so I claim – on textual evidence, including interpretations of the projects of authors, of distinct arguments forwarded, and of the meaning and reference of key concepts. Against Pocock, for instance, I point out the existence, in prominent places, of instrumental arguments about the fragility of liberty which, following *his* representation, should not have been there. Hence, what follows is also reconstructive in a second sense of rectifying what I contend are faulty representations of certain authors.⁸¹

Fifthly, the heart of *my* reconstruction is the idea that liberty – understood itself as a core (surrounded by a historical variety of further content) 'negative' value of mutually (legally and socially) guaranteed and defined security and inviolability of person and possessions, and some equally defined space of free action – is a fragile and non-natural common good, and that its existence and enjoyment requires continuous civic intervention and activity. Around this core I have *come to see*⁸² four different, related dimensions of argument which have already been noted

79. See Chapter 8, section 5.1

80. Pettit's work is discussed in Chapter 7, section 3.

81. There is a third sense in which this thesis is reconstructive. Apart from the deductive ('*constructive*') and critical ('*re-*') aspects, Chapter 8 is an attempt to systematise, in a manner which deliberately *abstracts* from historical references, the range, variety, and internal tensions of the tradition as a whole – 'presenting' it as a theoretical space for argument for contemporary use. However, the thesis contains very little reconstruction in the sense of attempts to develop a positive contemporary 'theory' of republicanism.

82. My reconstruction is also *inductive* – or whatever terms one may use to describe the manner in which I gradually decided the fruitfulness of distinguishing four different dimensions of that core argument which was noted by Skinner (origi-

above and which will be developed at great length in Chapter 8. These internally diversified dimensions are connected as different elements or aspects of the same idea of fragility, at times intimately, often through the slightly varying employment of the same concepts, and usually all of them present in each of the authors, although with varying emphasis.

They are not *inseparably* linked. Some authors may not stress that liberty is fragile on one or two of these dimensions – for instance it is possible to think that the content of *libertas* is given but that political structures still require to be defended (Harrington). It is possible to think that *libertas* does require continued legitimisation, but that patriotic sentiment can be counted on as a matter of *habitual allegiance* (Madison). In this sense we may also say – strictly relative to my theoretical definition of the tradition of course – that some authors are more republican than others. Such 'degrees' of republicanism may also, for what it is worth, be a way to denote the fact that Madison's place for civic virtue, compared to Jefferson's or Paine's, was actually quite small (how small is a matter of debate). Finally, we may speak of different 'generations' of republican arguments inside each dimension, as they were continuously restated inside new historical contexts and in the vicinity of competing frames of discourse, both of which obliged authors to innovate. To anticipate, Ferguson and Tocqueville in each their way restated republican arguments in the context of commercial civil society and theories of progress; Jefferson and Paine made cases for periodic constitutional deliberation and revision in a context of Lockean natural rights doctrine; Madison forwarded a version of 'institutional architecture' and social pluralism which was *supplemented with* virtue, rather than opposed to it as in Hamilton and Hume; Anti-Federalists linked Scottish *moral sense* with ideas of rational political trust through direct forms of representation; and more generally Anti-Federalists and Federalists debated a range of issues which were re-framed in the context of 'the large republic'.

Liberalism These new and competing frames of discourse which emerged in the Enlightenment – discussed at length in Chapter 4 – is a different and much more pluralistic way of speaking of those 'liberal' challenges which met the republican tradition. To repeat, there is no attempt to speak of liberalism as a competing *tradition*. The thesis hardly avoids entirely that bipolarity of ideas which structures the literature, but it should be stressed that 'liberalism', 'early liberalism' and other terms denote amalgams of doctrines which, apart from a shared commitment to negative liberty, are highly diversified in manners both too complex and too obvious

nally I operated with three), and in the way that my readings of the texts gradually provided each dimension with its varied content. Hence the legitimacy of not placing Chapter 8 before the historical chapters.

to discuss here.⁸³ What further unites them is only that they constitute challenges, more or less expressly, in various ways, and on various dimensions, to republican arguments.

Republican arguments on each dimension were capable of a much higher degree and variety of reformulation inside each of these languages, in the face of each conceptual challenge, than has been customarily assumed. Against Pocock as well as Skinner I argue – not so much methodologically as by way of textual examples – that republican arguments survived in recognisable forms in a wide range of conceptual circumstances because both republican discourse and the several discourses it encountered through history were very flexible indeed. But they were not endlessly flexible:

The republican *moment* comes completely to rest to the extent that *some* versions of the new discourses become influential. 'Liberalism' becomes victorious when – or to the extent – that the very idea that *libertas* is an artificial and precarious achievement of co-operative, politically virtuous citizens disappears. It does so, for instance, when an institutionalist *political science* of checks and balances becomes seriously advocated which is thought to render civic virtue superfluous. It does so when the justificatory appeal to the inalienable equal status and 'rights' of man before his God becomes disassociated from the contingencies of political struggle, and when the language of consent becomes married to a rationalist derivation of a finite set of universal rights. Again, it does so when the gradual acceptance that the liberty of citizens may be employed to pursue their religious callings, their personal fulfilment, or their craving for material comfort become completely dissociated from republican conceptions of virtue, let alone where such virtue becomes seen as the problem rather than the solution. And finally, it does so when conceptions of the very temporal contingency of political orders, and of the frailty and constant inadequacy of human resolve to sustain such orders, evaporate and disappear in Enlightenment narratives of human progress and perfectibility. I develop these matters in great detail, discussing the various parameters of decline for each dimension of republicanism in Chapter 8.

Because the dilution of republican themes was a gradual process – one may remember Madison's idea of 'economising' with virtue – and because of the fact that the several aspects of the republican argument were not logically inseparable it is obviously the case that the designation of names to one 'camp' rather than another is often difficult. At any rate, and to repeat, such a historical division is not my intention, and my approach is not committed to theoretical views of discourse which presuppose such one-dimensionality of authorial intent.

83. See for a recent discussion Dagger (1997).

8. Outline of the Thesis

After this Introduction follow five chapters of history of ideas. Chapters 2-6 contain short readings of all the main figures in the republican tradition. Chapter 2 starts with a preliminary statement of some points of interpretation, including the role of the Pocockian heritage, and a discussion of the first three stages of republican history of ideas. Here, I seek to rehabilitate a more political Aristotle: the connection between Aristotle's ontological ethics of human development and his ideas of justice, friendship, and constitutionalism is poorly understood. Politics is *not* in fact the vehicle or locus of a teleology of virtue, as much as a proto-republican, prudential science of establishing and maintaining political communities based on a common advantage in security and lawfulness - as a *precondition* for a virtuous 'private' life. Following the research of Mogens Hansen,⁸⁴ I reflect on the significant existence of both a 'positive' and a 'negative' idea of liberty in Greece. The second, Roman, stage is Cicero's classical and immensely influential formulation of *libertas*. The third is the Italian Renaissance, with Guicciardini and - above all - Machiavelli, the latter introducing a lasting realist concern with power and conflict.

Chapter 3 first discusses the significant British republican tradition - Harrington, Sidney, and Trenchard and Gordon (authors of *Cato's Letters*) - whose work was also a key channel for the transmission of republican discourse to America. Here, the republican argument becomes associated with natural rights discourse and, as also in Montesquieu, with commerce. After this, I look at Montesquieu's modernisation of republicanism in the context of the rising modern absolutist state. Finally, I discuss Rousseau's clearheaded fanaticism, and the attempt to revitalise a Spartan republic based on martial fervour and rural simplicity. Rousseau stands out as an example of the scope of republican ambiguities - liberty being jeopardised by the means needed to secure it.

Chapter 4 is a systematic examination of the fields of controversy in the encounter between republicanism and the proto-liberal discourse of the English and Scottish Enlightenment. Natural rights, interest and institutional architecture, commercial and 'polite' society, progress, and moral sense were key categories in the challenge of the fragility of liberty argument by Locke and, above all, by Hume, but also in the defence and restatement of the theme by republicans, including Ferguson. Also, I emphasise the work of Thomas Paine and Thomas Reid as further important transmitters of republican discourse across the Atlantic.

In Chapter 5, I go on to offer a pointed reconstruction of the themes of the constitutional debate in America. The work of various Anti-Federalist writers, Jefferson, and the authors of *The Federalist Papers* form corners of a discursive triangle. Typical positions may be found here, on the problem of having virtue and securing it in a large republic; on determining the political level for securing *libertas*; on the

84. Hansen (1991).

dangers or promises of a rural, commercial, or industrial economy; on the possibility of a legislative science, economising on virtue; and on federal constitution building as a distinct form of contingent and democratic political deliberation. Cutting (corners) through an immense literature, my message is that participants to this debate disagreed very little about *ends*, but much about *means*.

Finally, in Chapter 6, the work of Tocqueville is interpreted as an implicit critique of the illusions of American liberalism, including the hopes placed in constitutional architecture and the private virtue of a market-based civil society. Tocqueville formulated a republicanism for modern, democratic society where the very condition of enjoying *equal* liberty in several ways was both a danger to this liberty and, at least in America, harboured the potential for alleviating this danger.

After these historical chapters Chapter 7 clears the way for a synthesis by discussing and dismissing four influential but mistaken representations of the rationale of the republican tradition. In the context of answering the question of the difference between republicanism and liberalism, I also confront here the very important but, I believe, problematical representation of republicanism as a doctrine of 'resilient liberty', proposed by Phillip Pettit.

Chapter 8, the heart of the thesis, contains my condensed proposal to view republicanism as an argument about *the fragility of liberty*. Its four dimensions - artifice, space, political autonomy, solidarity/patriotism - are developed in some detail, with references back to individual republican figures. This is also the place for a further specification of exactly which historical developments in liberalism (or 'liberalism') constitute points of disagreement between the two traditions.

In the Conclusion, I draw together the main claims of the thesis. I also return to the question of the relevance of republicanism as an *empirical* challenge to political theory. Related to this, I look at whether the republican challenge to liberalism is a serious one for liberals, and Rawlsians in particular. I conclude that it is.

CHAPTER 2: INVENTING THE RES PUBLICA

1. Introduction

Since the publishing of J.G.A. Pocock's magisterial *The Machiavellian Moment* and the early debates it triggered, republicanism, civic humanism, and classical republicanism have come to live their own life as academic buzz-words. In much the same manner as community, civil society, and recently citizenship, the terms have an aura of generously encompassing vagueness and commendability. Republicanism is all somehow about joyful participation in the things of the *polis*, tinged with nostalgia for the moral clarity of times long gone.

But although a number of authors through history have used the vocabulary of *res publica*, *virtue*, *corruption*, and *liberty* to denote somewhat different things in rather different historical contexts, it still makes sense to speak of a family resemblance between them. This resemblance is constituted by a single, fairly clear and common-sensical argument, about the connection between civic virtue and civic activity, and the common liberty of citizens. I am claiming that this *prima facie* argument for citizens' participation in political affairs is the heartland of republican theoretical history. I further claim that the republican tradition has been burdened with well meaning friends seeking to enlist it in projects alien to its main concerns. Pocock, for all his brilliance, is one of them. Thus, disentangling republicanism from other creeds has become a pressing task. I see no other way of doing so, and of claiming with any confidence that one meaning of republicanism is any more right than any other, than engaging the historical sources.

I start with a brief outline of what is the matter with the extremely influential picture of republicanism which is presented by Pocock. After this, I seek to reconstruct a more viable picture of the republican tradition, starting in this chapter with the invention of the republican problematique in Greece, and continuing with Rome and the Italian Renaissance. I do not try to trace exact lines of influence or points of synthesis and revision of any of the key concepts and segments of political discourse. Instead, I aim at a pointed and didactic exposition of what I consider to be the defining argument of a distinct tradition of political thought. It tries to crystallise and highlight what, often in the nature of things, is overlaid in the works of historians of ideas by several layers of scholarly analysis of textual detail. This core, briefly, is about what I have chosen to call the fragility of liberty. 'Liberty' is the legally constituted and mutually recognised status of equal citizens that enables them to live in freedom and security in a state. And 'fragility' refers to the required measures to sustain and protect this liberty through time, in particular such that have to do with the instillment and exercise of civic virtue.

The former idea is not my personal discovery. It has been highlighted in a series of articles and books by Quentin Skinner, particularly in relation to Machiavelli, and later by Maurizio Viroli, covering related historical ground and extending the story to the work of Rousseau.¹ The claim to merit of what follows is the ambition to trace this argument in a systematic fashion all the way to the present, in a manner that sharpens some of the points, and also in a manner which may directly inform more analytical theoretical inquiry. I try to do so by looking at the great variety of ways in which the problem of the fragility of liberty posed itself to thinkers as diverse as Machiavelli, Montesquieu, Rousseau, Jefferson, and Tocqueville. The *problem* of liberty - in what manner was it fragile, what was its significance to begin with, and which types of civic virtue were needed and realistically available to sustain it - was different in a context of warring city-states, royal absolutism, the aftermath of the French or the American revolution, and modern mass society, and from different social perspectives. The development of republican thought is seen as a widening of perspectives on the fragility of liberty, but also as a series of more or less explicit *revisions* or *criticisms* by one theorist of his predecessors. Some of these criticisms were directed against certain types of liberal individualism or pre-liberal 'passive' accounts of negative liberty and citizenship. And late republicanism must be appreciated in the context of, and as challenges to, various forms of Enlightenment universalism, strong natural law doctrines, and the use of new theories of beneficial political institutions, civilising 'commerce' and 'moral sense'. And this is the case, even as republican themes were progressively formulated *inside* these very theoretical contexts.

2. Representing Republicanism. Pocock and Civic Humanism

Thomas Jefferson's famous statement that liberty is bought at the price of eternal vigilance represents a prudent and common-sensical attention to the manner in which individuals acting politically, together with others, may try to make the achievement of newly won common liberty *last*, or to reinstall it where it has been lost or is in jeopardy. To Jefferson and others, such acts could also be honourable, worthy, educating, even at times admitting of a special time-transcending beauty. Yet, they would achieve this moral or existential premium as a by-product of their more tangible and immediate object. Hannah Arendt delightfully recounts Jefferson's mentioning of the "public happiness" of the debate on the Senate floor, ignoring his repeated statement of preference for a peaceful, private life.²

The theme of the non-obviousness in historical time of the republic and the citizen's security within it is present already in Aristotle and other Greek writers, and it is prominent in Roman writings, in particular Cicero. It receives its classical

1. Skinner (1978; 1983; 1986; 1990; 1998); Viroli (1988:1992).

2. Arendt (1973:126-27).

formulation in the Renaissance synthesis of Greek thought on popular self-government with the Roman, proto-modern, individualist understanding of legal citizenship as *libertas*. And this Renaissance synthesis, in changing embodiments and contexts, remained as the core of later republican thought.

But this is not how republicanism is usually presented. A part of the reason for this is a long-standing misunderstanding, or at least highly partial understanding, of the 'liberty of the ancients'. Long before Constant, Hobbes, in a famously scornful passage, noted that the participation of Athenians and Romans in popular commonwealths made them no more free from their many masters, than the people of Constantinople were free from their few. Constant also believed that the liberty of the ancients, and he did not distinguish much between the Greeks and the Romans, "consisted in an active and constant participation in collective power" whereas modern freedom consists of "peaceful enjoyment and private independence", and "enjoyment of security in private pleasures". He argued that this share in popular sovereignty in the small republics of ancient times indeed had a real significance, "the exercise of this will was a vivid and repeated pleasure", for which the ancients would "make many a sacrifice", in order to have an "awareness of his personal importance". Isaiah Berlin's later, somewhat broader statement of the dichotomy also saw the Stoic "inner citadel" and Aristotelian self-government as precursors of romantic versions of "positive liberty".³ All three, in addition, thought of the violently arbitrary and unlawful rule of popular revolutions, whether Cromwellian, Jacobin, or Bolshevik. Yet, they all overlooked the importance in Rome, Athens, and the Italian Renaissance of legal citizenship as the protection of the individual by the walls of the city.

The oversight, I believe, had to do with the Enlightenment discovery of representative democracy and natural individual rights, the temptation to overstate the radical nature of their newness, and hence the degree of break with the ancient past. However, today the oversight is also connected to a tradition of interpretation which includes the distinguished historian of ideas, J.G.A. Pocock. This tradition stresses the importance of a political way of life *exclusively* in terms of its moral value in itself for those lucky enough to participate in it. *The Machiavellian Moment*, in contemporary political theory and history of political ideas, is also a Pocockian moment. Pocock's book synthesises, in highly sophisticated form, a view of the Renaissance reception and transmission of classical republican ideals and language as primarily Aristotelian. As such, it marks the departure point for a large

3. Hobbes, *Leviathan*, II,21; Constant, *Liberty of the Ancients Compared with that of the Moderns*, *Political Writings* (pp.316-17). Berlin seriously misread Rousseau, taking him to mean by liberty "the possession by all ... of a share in the public power which is entitled to interfere with every aspect of every citizen's life", and also believed, at this stage of his writings, negative liberty to be "comparatively modern" (Berlin 1969b:162-63, 129, italics added).

number of scholars who have sought to deepen, qualify, or refute the historical importance of this picture of Aristotelian civic humanism, all however accepting the terms of meaning given to them by Pocock.

Pocock, like his great predecessor in Renaissance studies, Hans Baron, is indeed aware of the ongoing existence of a Roman conception of legal citizenship. But he emphasises what, following Baron, he calls *civic humanism*, as a distinct political discourse which is different from a jurisprudential and philosophical one.⁴ According to Pocock, the main arguments of the Renaissance consist of ideological conceptualisations of the fragility and particularity in time and space, not of common liberty, but of politics as a renewable, truly human way of life that equips participants with the means to address the moral health of their selves. As regards the ideal, if not the exact content and proper arenas, of this life, there is nothing much new under the sun. At stake, in *The Machiavellian Moment*, is the possibility of continuing such a way of life, and the path to glory is to found a republic with this sole end in mind. We need to take a look at the paradigmatic themes introduced with Pocock's rediscovery of civic humanism in order to appreciate some significant cross-purposes and misplaced conceptual polarities.

In Pocock's version, the ideal of the *vivere civile*, and the general re-elevation of the *vita activa* over the *vita contemplativa*, was reasserted by Renaissance humanists as a response to the gradual discovery of the secular particularity of time and history, the modern notion "that each of the phenomena of history existed in its own time, in its own right and in its own way", and the departure from medieval belief in timeless universals and Christian eschatology. The political side to this was a departure from belief in "the existence among men of the hierarchical order existing in heaven and in nature", where change could only be conceived in linear teleologies of "degeneration or recovery" in the great scheme of things, and where "[a]ffiliation with the empire ... was affiliation with the timeless". The (Florentine) republic, by contrast, "did not reflect by simple correspondence the eternal order of nature", nor was there any doubt of its secular finitude. Hence, "[t]o affirm the republic ... was to break up the timeless continuity of the hierarchic universe into particular moments: those periods of history at which republics had existed ... and those at which they had not". The Greek ideal of a political life, "participation and action in a social structure which made such conduct by the individual possible", was a way of rendering meaningful this particularity of time, even when it involved the recognition that virtue could always only be partly realised, subject to the secular dangers of corruption. Culminating in Machiavelli, the principal parameters of political thought became stability and corruption in political institutions, and a re-politicised virtue came to refer to the heroic enterprise of securing the existence of the republic for as long as possible - in the sense of a self-reinforcing civic life. It

4. Baron (1966; 1988a); Pocock (1975:3-80).

was in this context, too, that Polybius' and Aristotle's doctrines of mixed government (in contrast to natural hierarchies) were revived, in Machiavelli as the utilisation of conflict and ambition, balancing the potentially disruptive quests for secular glory, and as the employment of natural capacities for virtue of different types of individuals, e.g., innovative state craft or military vigour.⁵

However, the contrast and incompatibility between what Pocock calls a virtue and a law paradigm is emphasised. The contract is laid out in an unusually explicit manner in a central 1981 article. Inside the "natural-law paradigm", the

individual is looked on as inhabiting a cosmos regulated by rational and moral principles, essential to its being, which are the nature of *nomos*". To "these philosophically perceived or divinely revealed systems manmade bodies of jurisprudence are assimilated ... Philosophy and faith become modes of cognizing and acknowledging law, with the result that jurisprudence gives access to all but the most sublime forms of intellectual experience

This world view is pitted against the "civic humanist mode of discoursing about politics", which "entails the affirmation that *homo* is naturally a citizen and most fully himself when living in a *vivere civile*". According to Pocock, neither in Guicciardini nor Machiavelli does the language of law appear, "least of all as a tool of normative political theory". Indeed, the two vocabularies are "markedly discontinuous with one another because they premise different values, encounter different problems, and employ different strategies of speech and argument". Acknowledging the existence of a jurisprudential advocacy of Italian independence from the late thirteenth century, as shown by Skinner, he still maintains that the *libertas* favoured in this discourse was of an essentially negative order, relative to the *libertas* of the republicans, and that the two remained separated. And so it remained for a very long time, according to Pocock. He supposed "a dialogue between the concepts of 'virtue' and 'right', and between their implied postulates, to have gone on over some centuries in the context of a European political discourse imagined as widely distributed in space and relatively stable over time". Pocock's view of what was the Aristotelian discursive matrix which was picked up in the Renaissance as a progressive civic humanism is elaborated in *The Machiavellian Moment*. Aristotle here

may be read as the originator of a body of thought about the citizen and his relation to the republic, and about the republic (or polis) as a community of values; and this is the approach which reveals its importance to humanists and Italian thinkers in search of means of vindicating the universality and stability of the *vivere civile* (...) the polis or republic was the association within which all particular associations

5. Pocock (1975:53-57); cp. Arendt (1958b; 1961).

pursued their particular ends. Association with others, and participation in the value-oriented direction of that association, formed both a means to an end and an end - or good - in itself⁶

In the following chapters, Pocock's argument is constantly present.

3. 'Republicanism' and 'Liberalism' - A More Complicated Relationship

Pocock's interpretation of republicanism as civic humanism is unfortunate for several reasons. First of all, it is conspicuously biased towards a specific type of classicist anti-modernism. Pocock admits in the central 1981 essay that he "allows his language to become Arendtian". The Arendt he has in mind is the influential transmitter of classicist *Bildung* and Hellas nostalgia, of the fully human *Vita Activa*, untainted by the petty concerns of material interests and the private realm. Indeed, Pocock is

interested in the possibility that jurisprudence can be predominantly social, concerned with the administration of things and with human relations conducted through the mediation of things, as opposed to a civic vocabulary of the purely political, concerned with the unmediated personal relations entailed by equality and by ruling and being ruled

But as we shall see, these ideas of Pocock, which he sees as a call through the centuries for "the moral stability of the human person", are only half, or less than half, of the picture, a serious distortion even of Aristotle's republicanism, and certainly of that of Machiavelli and later thinkers.⁷

But also Pocock's view of liberalism is peculiarly biased. He criticises the MacPherson school of political historiography for being too partial in its sources of ideological explanation, for dating the emergence of Lockean possessive individualism too early, and for seeing it as historically inevitable.⁸ Yet, he concurs with the traditional Marxist identification of liberal with *bourgeois*, and of the language of natural rights and legality generally with provisions for security in acquisition, pos-

6. Pocock (1975:67, 1981a:353-6).

7. Pocock (1981a:360; 1975:550). Towards the end of *The Machiavellian Moment*, Pocock summarises how, "[i]n terms borrowed from or suggested by the language of Hannah Arendt, this book has told part of the story of the revival in the modern West of the ancient ideal of *homo politicus* ... who affirms his being and his virtue by the medium of political action" (Pocock 1975:550). Pocock, I believe, somewhat misunderstands *The Human Condition* and Arendt's work in general. Arendt was not really very Aristotelian, and her 'civic humanism' was allowed its play - unruly, at times - only inside the broader framework of republicanism proper, to which she contributed. See Canovan (1992).

8. MacPherson (1962:160-93).

session and transfer of wealth, even as he grants that this form of possessive individualism long predates early capitalism. The problem with this liberalism and with the language of rights was that "because it defined the individual as rights-bearer and proprietor, it did not define him as possessing a personality adequate to participation in self-rule". Indeed, because inimical to virtue, it was associated with moral poverty and a generally *banausic* way of life.⁹

Liberalism in the end had to accommodate civic humanism's ideal of virtue as a fully human life by redefining it as *manners*, the infinite diversity of refinement and enrichment of the personality made possible by commerce, sociability, and the division of labour. This could legitimise a liberalism of state authority guaranteeing "the liberty of the individual's social behaviour, but [it] had no intention whatever of impoverishing that behaviour by confining it to the rigorous assertion of ego-centred individual rights". Yet, even this liberalism had its bad conscience, in the knowledge that "what was diversification for some was specialisation for others". Civic humanism thus, via Adam Smith's analysis of the division of labour (and, in another branch, via Rousseau's indictment of the *salon*) found a new embodiment in the early Marx' analysis of alienation.¹⁰

Defining the intellectual territory of liberalism so narrowly leaves more space for civic humanism, but it also makes Pocock's position vulnerable to criticism. As we shall see, such criticism has come from various authors insisting that Locke and the language of individual (natural) rights remained very much alive and well. However, it has also led to a serious misunderstanding of the *continuing* language of civic virtue, which was not only, although this is part of the picture, a *spill-over* into terms associated with economic activity and private life. Pocock's theoretical adversaries, whether Marxist or representatives of a peculiar American tradition of moralistic historiography, given to mourning the decline of the "soul of American Politics",¹¹ share his narrow conception of liberalism and the notion that rights and virtue are incompatible. However, the concerns of early modern liberalism were not so terribly different from those of Renaissance republicanism,¹² as regards their substantial value ideal - freedom from fear, the ability to go about one's business in one's own way, enjoying the fruits of one's labour in peace. Nor was the language of

9. Locke, writing, as Peter Lasslett established, *before* The Glorious Revolution, was a "First Whig who never became a True Whig", whose language never converged with the *Commonwealth men* (Pocock 1985c:229). Pocock notes that, "[I] am intrigued by the connection we seem to be uncovering between law, liberalism, and *bourgeoisie* (...) Civil Law ... presents us with possessive individualism in a form long predating early modern capitalism", and "[t]o write the history in law-centered terms ... is largely equivalent to writing it as the history of liberalism" (Pocock 1981a:360-61,363).

10. Pocock (1975:51-52; 1981a:363-67).

11. As one work criticising Pocock is entitled (Diggins 1986).

12. Shklar (1989); Tuck (1979:74).

individual rights initially disconnected from a moral context of obligation and mutuality. What changed was primarily the analysis of the conditions favouring these values.

In investigating the history of ideas it is difficult to see why we could not start with the hypothesis that republicanism continued as a competitor to various liberalism and that far from seeing a radical break, we should expect republican themes to overlap with them. We would expect them, then, to be discussed, dismissed, integrated, forgotten, or recovered because presenting an account of civic virtue as *still* necessary for the sake of private liberty, security, and property. There is no incoherence in a discourse which allows the satisfactions of private security *and* holds out the promise that sometimes political participation may lead to higher ends and higher meanings, because concerned with the greater good of securing the liberty of *all*. Nor is it incoherent to expect patriotic practices to be held in very high esteem by all, even though few would wish to practice them as a way of life, and even, when practising them occasionally, would do so for less dignified reasons.

This is the leading idea of the following pages. They do not contain a new answer to when and to what extent one ideological discourse was replaced by another, a language of the political good life giving way to the language of rights and property. The implication is that this question is wrongly put, and that a revision of *republican revisionism* is needed. Disputes over whether or not the American revolution and early history is republican or Lockean, and disputes about the degree of republicanism in individual writers, such as Jefferson, Madison, Smith, or even Locke himself, and about *how far*, into the English and Scottish Enlightenment for instance, the language of virtue may be traced, really must begin with a revision of the conceptual cross-purposes and prejudices that still abound, and a reconceptualisation of the historical discontinuities to be studied in the first place. Increasingly, commentary is questioning the incompatibility between civic humanist values, whose vast importance as a revaluation of the *vita activa* over the *vita contemplativa* was the important theme of Baron's writings on the Renaissance,¹³ and concern with legal matters. Far from existing as two independent and *discontinuous* discourses from Cicero onwards they are regularly intertwined aspects of the same problem.¹⁴ Even the modern revival of natural law occurred as much in conjunction as in conflict with post-Renaissance republicanism. Again, this is more easily visi-

13. See Baron (1988b; 1988c).

14. See, for instance, Riesenbergs (1969). Unlike Pocock, Baron does not, in fact, reach any conclusions about incompatibility with legal language. Another classical account, which takes the reader from Cicero to Algernon Sydney, stresses the importance of legal institutions (Fink 1962). Importantly, jurisprudential thought of the Renaissance was concerned with civil, more than natural law, and with the conditions of creating it. Justice and liberty, for secular purposes, was a thing of

ble when resisting the prejudice that natural rights represent an intensely individualistic and 'possessive' liberalism which simply could not have a deeper historical or psychological insight into either the moral texture of the person or the nature of political institutions.¹⁵ Finally, the advent of commercial society and political economy, while seriously challenging republican world views, also produced the setting for a new republican analysis of liberty and civic virtue under modern conditions.

So, to anticipate, the fault lines between 'republicanism' and 'liberalism' are blurred. Distinguishing between civic humanism and republicanism (or between early or classical republicanism and modern republicanism) does not really help, if the contemplation of Baron's civic vocabulary of the virtuous and worthy man comes to imply that any important political discourse of institutions and republican ways of life ever existed which was *exclusively* about the cultivation of such virtue. Noting how republicanism becomes more and more 'liberal' may be useful, when we talk about how the austerity and martial nature of political virtue changed, or how republicanism became reconceived in the context of a civil society based on commerce, or how *libertas* became reformulated in the language of comprehensive individual (natural) rights. But, again, it does not help if the exercise comes to suggest that it was ever about anything else but a species of negative liberty.¹⁶

The questions to be asked in order to trace discontinuities that matter are not about when and how republican discourse was diluted with individual natural rights or the acceptance of commerce. Instead, they concern when and how the language of virtuous citizenship became associated with the dangers of passion and social disruption. Or, with the advent of capitalism, they are about when and how the republican problematic was given essentially new answers that denied the importance even of a residually defined political virtue. This happened when virtue became privatised and marketised, conceived in terms of beneficially pacifying or moralising effects of market behaviour or even in terms of the public benefits of private *vice*, or, finally, in terms of the development of pluralism, civility, and taste in society. They also concern new evaluations of the role of a proper architecture of political institutions checking concentrations of power in civil society, and the possible point where such institutional engineering completely parted company with the notion that even the best of artifices requires citizens to support it. Above all, they concern when, how, and to what extent the very argument about the temporal

the city, not derived from a natural order (Tuck 1979:40).

15. Haakonssen notes that in "Locke, Montesquieu, Rousseau, Price, most of the Scottish Enlightenment thinkers and the American founders ... elements from both traditions go hand in hand" (Haakonssen 1993:570-71; cp. Haakonssen 1991). More generally, see Shapiro (1990:166-203).

16. Isaac (1988:350-55); Burt (1992:3-9); Sinopoli (1992:3-15).

precariousness of political communities was forgotten, because such communities came to be seen, in various theories of progress, as products of an economic-material evolution conditioning specific social and juridical forms, or as products of human reason and reasonableness benignly shaping the course of history. Republicanism was seriously absent to the extent that political discourse came to be conducted in a self-sufficient language of *justification*, of rationalist derivation of rights and state legitimacy in abstraction from an empirically based theory of their secular foundation in popular sovereignty and a political community, let alone from the moral notion that rights might bear some relation to non-trivial obligations to a specific community.

Judging the relative ideological impact of the republican or the 'liberal' *moments* at any specific point in history is difficult and not of first importance here. As noted in the Introduction, I am indeed suggesting that we view this encounter as a *series* of conceptually mediated disputes regarding more or less converging aspects and argumentative figures of political thought, which are typically associated with, or develop into something associated with ways in which we use the term 'liberalism'. Again, we shall be concerned with presences and differences, the detail and diversity of republican arguments throughout history as it meets a variety of implicit or explicit counter arguments.

4. The Classical Departure

The republican argument receives a very clear formulation in the Renaissance, and most obviously in the work of Machiavelli. But it has classical roots, insofar as the most general idea of the political community as a co-operative enterprise for the sake of common security is clearly visible in both Aristotle and Cicero. Both Greek and Roman political thought are rich universes, often difficult to access, and each has given rise to a wealth of interpretations. Even so, it is my contention in the what follows that each of these universes are not as entirely alien as often presumed, and that central authors in each their historical contexts make recognisable claims which tend to get lost in much commentary. Above all, and to anticipate, neither Greek nor Ciceronian republicanism were species of a 'neo-Aristotelian' communitarianism.

4.1 Athens. The Classical Conception of the Polis

Let us start with ancient Greece, and more particularly the Athenian *Polis*. Here, one of history's very first recognisably democratic systems was installed by Solon and developed and refined in the following centuries. The *primacy of politics* in this political way of life has often been described in terms of the importance of an agonal quest for recognition and fame. Paul A. Rahe, citing a number of classical sources, insists on the alien character to a modern mind of their concern with honourable and self-sacrificing action and their corresponding contempt for material gratification and privacy. The fear of exile, for instance, was not primarily motivated

by its physical insecurity and lawlessness, but by one's being unable to hear the herald calling the citizens to the assembly, unable to speak and act in the company of equals.

This is the Arendt story of politics. Or rather, it is the version of *The Human Condition* as this work is usually read. At stake here is the existence of a public space where individual and authentic actions could be performed, seen, judged according to uniqueness or greatness, and remembered through the centuries, thus bestowing immortality on the 'doers of deeds and speakers of words'. Or, if the existential-heroic gloss is replaced by an emphasis on a clearly defined moral cosmos of duties and obligations, it is also MacIntyre's and Sandel's story of politics. Rahe goes on to insist - using heavy artillery to drive home a not unfamiliar point - that, "no Greek thinker ... ever elaborated a *public-spirited political* philosophy grounded in liberal principles".¹⁷

However, there is reason to doubt whether the secure enjoyment of material security and personal liberty was of so little significance after all, even in a culture where a happy life, for male citizens, was lived inside boundaries of cultural meaning whose comprehensiveness is alien to moderns. Rahe cites an illuminating exchange from Xenophon between Socrates and Aristippus, where the former ridicules the latter's longing for a peaceful and easy life, enjoying an unpolitical liberty (*eleutheria*) between slavery and rule. Socrates attacks the idea of pleasure for its own sake and the failure to be concerned with the good of the community, and points out that even the enjoyment of material pleasures loses its value in the absence of the esteem of one's fellows and knowledge of own achievement. But Rahe's reading of the passage misses important points: Socrates rhetorically asks Aristippus whether he wants to belong to the class of the ruled as he has no taste for the sacrifices of ruling, and the following exchange takes place:

"Nay," replied Aristippus, "for my part I am no candidate for slavery; but there is, as I hold, a middle path in which I am fain to walk. That way leads neither through rule nor slavery, but through liberty, which is the royal road to happiness." "Ah," said Socrates, "if only that path can avoid the world as well as rule and slavery, there may be something in what you say. But, since you are in the world, if you intend neither to rule nor to be ruled, and do not choose to truckle to the rulers - I think you must see that the stronger have a way of making the weaker rue their lot both

17. Arendt (1958b; 1977:30-35); Robinson (1995); MacIntyre (1985:121-45); Rahe (1992:48); Riesenbergs (1992:3-55). Greek democracy meant that up to one fifth of the free citizen population at a time (which did not include women, slaves, or foreigners) would take part at the assembly meetings (taking place monthly or more often) and to an equally impressive extent in popular jury duties, in public deliberations and decisions about common affairs. For details, see Hansen (1991). For a good short description, see Hornblower (1992).

in public and in private life, and treating them like slaves (...) [I]n private life do not [also] brave and mighty men enslave and plunder the cowardly and feeble folk?"¹⁸

Rahe suggests that the Greeks had not yet understood the possibility of Aristippus' middle path. But the point seems to be that whereas Socrates and others could certainly conceive of such liberty, they held it to be practically impossible to obtain.¹⁹

If we abstract for a moment from the testimony of Greek thought and look at the historical context, including the geo-political condition of a small rural society progressively growing more prosperous through imperialism, the more striking fact is the invention of a new type of collective, cooperative security. In such surroundings, personal security could only be enjoyed in strict adherence to the common good of national survival and under the condition of induced propensities, through religion, education, and a structure of motivation and sanction based on shame and honour, to suffer sacrifice and hardship. Such an armed barrack existence, apart from being sweet-ened with the possibility of fame and recognition, still entailed equal protection under law, and was surely better than the serfdom and despotism suffered by the peasant population of Ithaca before Solon. In the words of Xenophon's Socrates, responding to his obstinate interlocutor who sees no difference between the voluntary hardship enjoyed by the virtuous ruler and that of the ruled:

"What, Aristippus," exclaimed Socrates, "don't you think that there's just this difference between these voluntary and involuntary sufferings, that if you bear hunger og thirst willingly, you can eat, drink, or what not, when you choose, whereas compulsory suffering is not to be ended at will?"²⁰

While Athens was very far from providing anything like modern freedom rights, popular participation was not just a question of honour and fame. The remote Greek experience is too easily assimilated to romantic modern ideas if we fail to recognise *polis* institutions as a system of government with an instrumental purpose which was so important that assembly attendance was paid. This purpose included control with leaders, impeachment of unsuccessful generals, passing of laws about economical, religious, and military affairs, decisions about the granting of citizenship status, the rare ostracism or worse of those, like Socrates, perceived to threaten the morals of the city, and economic measures to distribute wealth to citizens in need. Some of this is alien and unpleasant to a modern mind (and cer-

18. Xenophon, *Memorabilia*, II,1,11-13.

19. Rahe (1992:I,36).

20. Xenophon, *Memorabilia*, II,1,18.

tainly far from later day communitarianism).²¹ But it also describes a political reality whose rational and causal structure we do not have to leap into an entirely different moral universe to understand.²²

In recent years ancient Greece scholarship has seen a number of revisionist interpretations. The work of Mogens H. Hansen deserves particular attention.²³ Hansen dismisses a number of traditional views that overstate the contrast between Greek and modern conceptions of politics. It is not true that the Greek city state was a total fusion of state and society. The *polis* was a political structure - political institutions and *constitutions*, the variety of which was famously studied by Aristotle - which, while having religious elements, was in principle secular. And, in contrast to later Italian city states, it was not based on an economic structure of guilds.²⁴ But most significantly, Hansen demonstrates two things. First, he reconstructs the existence of liberty and equality as a conceptual pair, tied to the ideology of democracy, but understandable by all Greeks, whose meanings are not so far from modern imaginations after all. Secondly, he shows the systematically different evaluations of these values by democratic ideologues and more conservative philosophers, including Aristotle.

Liberty, or *eleutheria*, had both negative and positive aspects. First, it could mean the status, *in a society*, of not being a slave (i.e., a status shared by metics). Secondly, it could mean the freedom of a specific *polis*, i.e., vis-à-vis potential foreign invaders. Thirdly, and most importantly, it was a constitutional concept which had to do "both with political participation in the public sphere and with personal freedom in the private sphere".²⁵

Contrary to received views in political theory and history of ideas, Greek *eleutheria* entailed codified legal restrictions on state trespassings on citizens and on citizens' conduct towards one-another in a number of areas, including the protection of person, property, the home, and freedom of speech. The often noted 'failure' of the Greeks to distinguish between public and private and to show concern for the inviolability of the latter is also a somewhat mistaken interpretation. While the 'private' affairs of the *oikos* were less the affairs of the inviolable *individual* (certainly not women, children, or slaves) than the affairs of family life and business, Hansen shows that the *polis* only regulated a limited number of activities. A

21. On this point, see Phillips (1993:122-48).

22. As suggested by MacIntyre (1985:126-30).

23. In particular Hansen (1991).

24. Hansen (1991:64).

25. Hansen (1991:76). Aristotle himself stated that "'Ruling and being ruled in turn' is one element in liberty ... one which all democrats make a definitive principle of their constitution. Another is to live as you like. For this, they say, is a function of being free, since its opposite, living not as you like, is the function of one enslaved ... [F]rom it has come the ideal of 'not being ruled'. Not by anyone at all if possible, or at least only in alternation" (Aristotle, *The Politics*, 1317a40-b16).

difference to modern liberal democracy and, as a matter of emphasis, to Roman *libertas*, may have been a certain volatility in private 'rights'. Even inside relatively stable constitutional frameworks and various institutional safeguards, they may have been subject to some vacillation of popular opinion and to the power of rhetoric in the assembly. But even here modern receptions are likely to be biased by the anti-democratic sentiments of Aristotle and Plato.²⁶

Equality in Athens was essentially the political equality of status enjoyed by citizens. It was primarily constituted, according to Hansen, as the equality of opportunity to speak in the assembly. As in modern liberalism, the two values of equality and liberty often came to converge as "equality of liberty".²⁷ Thus, whereas *isonomia* and, more important according to Hansen, the more specific *isegoria* (the equal right to speech in public assembly) corresponded to aspects of constitutional liberty in its participatory aspect, also privacy-freedom was equal.²⁸

Liberty and equality as democratic values were comprehended by all Athenians. But they were also contested values. The democrats claimed that only democracies were characterised by the rule of law and its protection of the (equal) liberty of the citizens.²⁹ On the other hand, moderates like Aristotle tried to depict liberty, or at least the democratic conception hereof, as unrestrained license.³⁰ In a similar vein, reminding us of Burke's (mis)rendering of the Jacobin rights of man *and* citizen, equality was imputed to mean a postulated natural equality which ought to translate to equality in all matters of life, or to mean that the authority of age or wisdom would not be respected. However, the democrats really saw it as an opportunity concept which also served as a basis for that *agonal*, competitive spirit which remained central to the *polis* culture.³¹

Hansen's discussion of the various aspects of liberty and equality in Athens is extremely important. But his account does not quite take the last step to note that one aspect of liberty, i.e., political and participatory liberty as well as the general liberty (from invaders) of the *polis*, as secured by patriotic citizens, was conceived as instrumental to the enjoyment of another, i.e., the enjoyment of private liberty.³²

26. Hansen (1991:76-81).

27. Hansen (1991:81).

28. Also, according to Raaflaub, intrinsic to *eleutheria* was not only "Gleichwertigkeit jeder Stimme der Beschlussfassung und ... das Recht der freien Meinungsäusserung" but also the "auf den geschriebenen und deshalb allgemeinverbindlichen Gesetzen beruhende Rechtsgleichheit." Indeed, "[d]ass der Geringe, wenn er im Recht ist, gegen den Grossen aufzukommen vermag, auch dass ist Freiheit" (Raaflaub 1984:544-45).

29. Hansen (1991:74).

30. Aristotle, *Politics*, 1310a22-39.

31. Hansen (1991:81-85).

32. However, according to Raaflaub, the Greek concept of liberty or freedom, *eleutheria*, while clearly different from the Roman *libertas*, arose from early democratic conviction "dass die 'Herrschaft der Wenigen', Sklaverei für die Vielen

We noted the theme in Xenophon, but it is visible also in one of the most famous classical sources, Thucydides' rendering of Pericles' funeral speech:

Our constitution is called a democracy because power is in the hands not of a minority but of the whole people. When it is a question of settling private disputes, everyone is equal before the law; when it is a question of putting one person before another in positions of public responsibility, what counts is... the actual ability which the man possesses ... And just as our political life is free and open, so is our day-to-day life in our relations with each other. We do not get into a state with our next-door neighbour if he enjoys himself in his own way (...). When our work is over, we ... enjoy all kinds of recreation for our spirits ... in our homes we find a beauty and a good taste which delights us every day and drives away our cares. Then the greatness of our city brings it about that all good things from all over the world flow in to us (...) This, then, is the kind of city for which these men, who could not bear the thought of losing her, nobly fought and nobly died ... it was the courage and gallantry of these men, and of people like them, which made her splendid (...) Make up your minds that happiness depends on being free, and freedom depends on being courageous³³

The nature of this democratic ideological discourse of fourth century Athens, and the contestation of the values of democracy in general, seems to have been somewhat lost to us, although no particular force of hermeneutical imagination is required to appreciate it. It seems obvious that Greek political thought was habitually concerned with categories of value many of which, if by no means all, were also those of the moderns, and that chief among them were conceptions of legal citizenship rights, protection of privacy, and general welfare.

But *internal* differences are illuminating. Hansen claims that *eleutheria* in the specific democratic and constitutional sense was dismissed by aristocrats and oligarchs.³⁴ However, an early, more generic conception of what came to be called *libertas* by the Romans was more widely shared, also by Aristotle. Whereas the latter disagreed with the democratic ideal of *equal* liberty (for what he stressed were unequal individuals), we shall see that he was centrally concerned with constitutional arrangements, conceptions of justice, and notions of political community that place

bedeute und das deshalb Freiheit für die Vielen nur durch beharrliches Festhalten and der direkten Regierungsbeteiligung (was *damals* mit Herrschaftsinhabere gleichgesetzt wurde) zu bewahren sei. Der demokratische Freiheitsbegriff Athens war deshalb notwendigerweise auf die aktive Beteiligung aller Bürger an der politischen Mitbestimmung fixiert" (Raaflaub 1984:544-45).

33. Thucydides, *History of the Peloponnesian War*, II, 37-43.

34. Hansen (1991:76).

him at the beginning of the republican tradition. As we proceed to examine Aristotle's thought, it is, however, worth remembering that his was the more moderate and conservative voice in a dialogue which also had a radical, democratic participant. Differences certainly concerned the nature of common liberty. But they were also, in a way which started a lasting radical-versus-conservative republican dialectic, about the *manner* in which such common liberty was best secured. Against the democratic ideology of political equality in self-government, Aristotle expressed the aristocratic fear of democracy as mob rule and stressed the idea of the mixed regime which, historically and in terms of influence on the early republican tradition, was to carry the day.

4.2. A More Political Aristotle

Rahe advises us to look up the classics themselves rather than later day historians, and has in mind Aristotle in particular.³⁵ But there is reason to question the traditional way of approaching this author and his dictum about man as a 'political' animal. We need to appreciate that what he had to say makes sense, not only in terms of an ethics of substantial virtues and the good life (the existence of which is obvious), but also in terms of the political condition of the time - particularly in terms of the *political* significance of democracy and other forms of government.

The typical renderings of Aristotle³⁶ share the interpretation of politics as the only truly human way of life (in Pocock, *via* Arendt, a way of life which transcends necessity and allows 'freedom'). It is a medium for the pursuit of excellence and the common enactment of substantial virtues. Politics and ethics are intertwined so that the *point* of politics is to promote the good life, and to do so directly and in an integrated manner: indeed politics, when it goes well, is an end in itself, and the *polis* is an entity with a *telos* of shared human virtue. As a troubling parenthesis, if it takes an ideal city to produce virtuous individuals, Aristotle's political writings and his sobering reflections on the conditions of the best regime would seem to be a council for utter despair. In fact, most commentary on the integrated Aristotelian politics and ethics subordinates the former to the latter, largely ignoring the severe political constraints on the actualisation of even remotely ideal conditions for ethics.³⁷

35. Rahe (1992:29,34-35).

36. Sabine (1973:102); MacIntyre (1985:146-64); Pocock (1975:66-76); Nelson (1996: 53-67).

37. However, in the fourth book of the *Politics*, Aristotle dismisses, for practical purposes, the utopian contemplation *both* of the absolutely ideal state, and of the best in the circumstances. He is perfectly ready to inquire into the conditions of an existing constitution, "both how it could come into being, and how once in being it may last longest", and its piecemeal and popularly approved improvement, i.e., "the introduction of a system which the people will be easily persuaded to accept, and will easily be able to bring in, starting from the system they actually have" (Aris-

Against this, Bernard Yack has recently presented a more political reading in a quite remarkable and tightly argued book. I cannot discuss its exegetical details here, but the overall picture is compelling. Yack concludes that Aristotle's ideas about politics "have been obscured by overly romantic and moralistic interpretations":³⁸

In Aristotle's conception, political community is instrumental to the good life and virtue rather than an integral part of it. It is often ignored that community (*koinónikon*) is a generic term used to refer to social groups generally, including business groups and religious groups. Such groups are composed of significantly different individuals who are bound to each other, not in terms of a collective identity, but in terms of things (interests, goods, activities) that they share and cooperate about. Members of a certain type of community may indeed share an important part of their identity which predisposes them, in some cases, to have special concern for each other. But communities are not, as was perhaps more the case in the Platonic ideal state, criticised for this reason by Aristotle, closed systems of rules, and individuals are not constituted by their communities to the extent that its particular common good determines their behaviour.³⁹ Rather, different individuals may have a stable idea of 'who' people like themselves are, and still experience conflicts, mistrust, or envy. And for this reason, all communities require their different forms of friendship (*phília*) and justice.⁴⁰

So, too, do political communities. Neither Athens nor any of the smaller city-states were small and homogeneous enough to be *face-to-face societies*, and there was no question of individuals measuring and interpreting the value of their own existence in terms of the collective life or moral *telos* of the *polis*. Aristotle is quite clear about what were also historical facts, namely that joining together heterogeneous individuals, households and villages in a larger community facilitated a more secure and self-sufficient way of life, and that such tangible objectives were the origin of the *polis* (even as it also became the condition for the good life or human flourishing).⁴¹ The *phília* peculiar to political communities, distorted by contempo-

tote, *Politics*, 1288b).

38. Yack (1993:281). I draw a great deal on Yack's account in the following.

39. Plato's views about unity in the state, and the virtues of plurality, are discussed by Aristotle in *Politics* (1260b27-1262b36).

40. "[I]n every community there is supposed to be some kind of justice and also some friendly feeling. At any rate people address those who are on the same ship or serving in the same force with them as friends; and similarly those with whom they are otherwise associated. But the term of the friendship is that of the association, for so also is the term of their form of justice" (Aristotle, *The Nicomachean Ethics*, 1159b24-30).

41. "[W]hile the state came about as a means of securing life itself, it continues in being to secure the good life" (Aristotle, *Politics*, 1252b29-30); and "[p]olitical associations ... are believed to have been originally formed and to continue in being for

rary commentators,⁴² is far from either brotherhood or family ties, let alone comradeship in virtue. Unlike the perfect friendship based on goodness between good men, i.e., virtue friendships, political friendship is a species based on common advantage, classified along with that of fellow-voyagers and friendship with foreigners (with whom one may conduct trade). And this is so even in perfect political friendships, whose *homonoia*, or 'concord' is still only an agreement between good men about what best secures common advantage.⁴³

This does not mean that such friendship is necessarily as fragile and fleeting as the momentary trust of a business transaction. The common advantages of political community are more like a shared fate, essential goods of a long-term nature, the appreciation of which is likely to strengthen mutual concerns, even propensity to sacrifice, not unlike a Tocquevillean self-interest 'rightly understood'. Moreover, justice, which is the second major social bond in all communities (but which is an acquired disposition emerging from practice and actual interaction, rather than naturally forthcoming), may help. Political justice is the formalised and institution-

the sake of advantage, for it is this that lawgivers have as their object, and people say that what is to the common advantage is just" (Aristotle, *Ethics*, 1160a10-13).

42. MacIntyre (1985:155-59).

43. Aristotle, *Ethics* (1161b15-16), and even more clearly, in the *Eudemian Ethics* (1242-1243a). For instance, "in the household (*oikia*) are first found the origins and springs of friendship, of political organisation and of justice" (*Eudemian Ethics*, 1242a9). Aristotle also notes the distinction, among civic friendships, between those that are *legal* and those that are *moral*, in which latter "recriminations most occur, the reason being that it is *contrary to nature*" (*Eudemian Ethics*, 1242b17, italics added). Also, when the passage about how "[f]riendship also seems to be the bond that holds communities together, and lawgivers seem to attach more importance to it than justice", may be read to mean, *contra* modern liberalism, that states need strong emotional bonds as well as neutral institutions and laws, it must be noted that this friendship is concord (*homonoia*), and

[t]here is said to be concord in a state when the citizens agree about their interests, adopt the same policy, and put common resolves into effect. Thus concord is concerned with practical ends, and among these only with such that are important, and can be achieved by both parties [i.e., democratic and oligarchic parties], or by the whole body of the citizens ... [as] when the citizens unanimously decide that offices shall be elective ... [or] as when the people and the upper classes both think that the best men should govern; for in this way they all get what they want. *This concord is evidently ... friendship between citizens of a state, because it is concerned with their interests and living conditions* (Aristotle, *Ethics*, 1155a23-24; 1167a23-b4, italics added).

Finally,

Civic friendship is ... based on utility, and fellow citizens are one another's friends in the same way as different cities are ... nor ... do citizens know one another, when they are not useful to one another, their friendship is a ready-money transaction (Aristotle, *Eudemian Ethics*, 1242b14-15).

alised rules of mutual obligation, of what is due. Again, somewhat against the tendency of communitarian interpretations of Aristotle,⁴⁴ justice is not derived from the substantial common good of the *Polis*. Clearly, Aristotle has developed such a conception of the good life in his ethical writings. However, when discussing the nature of the best regime which is most conducive to such a life (towards the end of *The Politics*), political justice is strangely absent from his concerns. The reason for this, Yack claims, is that the best regime is a model arrangement. It describes the objectively best conditions, such as wealth, equality, and unlimited leisure, for leading a good life for the part of a community which is *best capable of doing so*, all in wilful abstraction from such states of affairs and conflicts that lead to the need for justice in the first place. One possible implication is to have in the state a large class of labourers who are not citizens, *even though* they, unlike natural slaves and women, possess rationality.⁴⁵

Unlike what is commonly believed, at least for political purposes, Aristotle did not have a traditional natural law doctrine with a set of intrinsically right standards for conduct or institutions, which actual regimes approach more or less.⁴⁶ Rather, political justice is the conception of a reasonable and acceptable mutual regulation of obligations and proper conduct which emerges from the deliberative, but also power-based, collective efforts of particular political communities. The quality of such efforts should be evaluated according to whether and how they further the common good of the community. This common good is rather indeterminate. Although ethical knowledge of the good life is an important limiting condition, it cannot be stipulated in abstraction from the relations of power and the possibilities of compromise between different classes for the sake of social peace, in those actual, highly imperfect, political communities which Aristotle is nevertheless quite willing to subject to piecemeal reform. Hence, unlike justice in the family, which is dictated by paternal authority or by custom, and unlike Aristotle's more limited conception of distributive justice (often generalised to be the Aristotelian doctrine of political justice), political justice is disputed terrain. Political justice capitalises on

44. MacIntyre (1985:244).

45. Yack (1993:168-69).

46. According to Yack (1993:140-49), the distinction between conventional and natural right is rather that between the merely socially agreed conventions about such things where, before regulation, one would be indifferent, such as the sacrifice of a goat or the size of a ransom, and on the other hand the regulation of mutual obligations in a community. As reasoning creatures we are naturally disposed, once we live in political communities, to aim at such regulations, but they are not eternally and universally valid. While much of Yack's argument on this issue is sound, passages in *The Ethics* still suggest that Aristotle does recognise natural law in a more determinate sense: first, as regulations of the most important political things, but such which admit of a single best form in each particular set of circumstances, and second, the immutable law which the gods "presumably" recognise, but which is of little consequence to man (Aristotle, *Ethics*, 1134b24-1135a6).

the natural capacity of man to form law-ordered political communities and be socialised by such law, but also on his capacity for reasoned speech - the means of the necessary deliberation which leads to the best possible conception of justice.⁴⁷

How does all this square with Aristotle's teleology? Yack plausibly suggests that the *polis* is not *natural* in the manner usually taken for granted in readings of Aristotle. A more political reading of Aristotle also receives its persuasiveness from dissolving an otherwise extraordinary contradiction between a biological-organic idea of the *polis*, and the actual analysis of constitutions and conditions of the good life, where Aristotle would seem to be led to the conclusion that no *polis* has ever reached its form. This contradiction disappears if we assume that some of Aristotle's organic metaphors about the *polis* are indeed metaphors. Aristotle's description of the best regime is an empirical generalisation of the best conditions for the good life, not of the inherent telos of political communities. The *polis* is 'natural' only in the more limited sense that it is the contingent outcome of a universal propensity of humans to form self-sufficient communities, and in the sense that it is the *condition* for individuals to further develop *their* potential in the direction of a fully human life of virtue (rather than to degenerate, in the absence of law and justice, to the "worst of all animals"). It is simply very difficult to make sense of Aristotle's comparative institutional studies and his entire approach, unless we allow for an element of indeterminate, constructive human effort (law-making, definition of justice) to get the political community started - after which, because of the potential for justice and *philia*, the *polis* may then function as an organised, 'organic' entity.⁴⁸

47. "In the state, the good aimed at is justice; and that means what is for the benefit of the whole community". While different groups or classes advance different claims to merit (eligibility for office, share in political power), based on for instance birth or wealth, "something more is needed besides: I mean justice and the virtue that is proper to citizens". Such justice, and its peculiarly *political* virtue is also a prudential necessity: "For without these additions it is not possible for the state to be managed". Also, "[b]y 'right' we ought to mean 'equally' right, i.e., right with respect to the benefit of the whole state and the common interest of the citizens" (Aristotle, *Politics*, 1282b15-1283a22). Again, whereas this contingent mixture receives a definite content in Aristotle's own middle-of-the-road version, he is also clear about the almost endlessly different requirements of different institutions. He does not, of course, *à la* some modern day discourse ethics, hold that the outcome of deliberation is right or true by definition or through some procedural rule. Rather, he is making a political point about necessary legitimation and consent in diverse communities.

48. Yack supports his claims with a discussion of the organic vocabulary in the beginning of *The Politics* in the context of Aristotle's metaphysical and zoological writings (Yack 1993: 90-96). They are also quite generally supported by Aristotle's praise of political founders and lawgivers and their practical skill, to which large parts of *The Politics* testify, e.g., "[a]mong all men ... there is a natural impulse towards this kind of association; and the first man to construct a state deserves credit

Moreover, as there is no *naturally* perfected *polis*, there is no intrinsic connection between such a *polis* and human perfection, and no *a priori* reason to assume either that only perfect political circumstances may facilitate human flourishing, or that such flourishing takes the exclusively political form of active self-government. While ruling and being ruled in turn clearly makes for very good circumstances - by facilitating the equality of condition and the maximum moral training derived from the exposure to legislative deliberation and law, the alternative interpretation allows us to make sense of the otherwise peculiar fact that Aristotle, despite slim chances of realising a perfect regime, nevertheless assumes the possibility of cultivating the virtues and leading the good life, and, constantly in the ethical writings, appeals in a common sense manner to shared knowledge about its components. Aristotle's less than perfect Athens, and several other city states, seem to have permitted the development of virtue - at least for some.

The *koinónikon* and *philia* intrinsic to living the good life, invoked by contemporary readers of Aristotle, was of the utmost importance to him and to his time, but it was not the stuff of *political* community and *political* friendship. Aristotle did have an 'Aristotelian' (naturalist, virtue based) ethics, but it was only linked to his political theory in the sense that the latter was an instrument for creating the conditions for the former. These conditions were stability, security, constitutional politics, justice, the rule of law, and a set of educational and cultural factors leading to a cooperative political community, capable of civilising and pacifying the inevitable conflicts in all existing societies - in Aristotle's time as well as ours. Aristotle was far too realistic and in line with the common sense of his time to believe that relatively large numbers of individuals with different interests and backgrounds would be capable of a sense of mutual obligation and restraint, let alone be willing to go to war for each other, in the name of anything less tangible than an experience of mutual advantage and dependency. Although political action was worthy and necessary, and although the best and most stable regime was one which had a popular element in it, it was not itself *the* good life. And while Aristotle's ethics has been and remains a challenge to modern conceptions of individual autonomy and reflective life-plans, and one easier to integrate into a Christian-scholastic hierarchy of values determining the worthy and natural life, it is not so much opposed to private negative liberty, as *anterior* to, or even compatible with, a premodern, non-individualistic conception of it: the 'local' small-group life of *philia* and quest for human perfection, legally secured through some degree of equal citizenship and mutual respect for justice, all behind the protective walls of the *polis*.

Following other commentators of his day and the evidence available to him about what was prudent political science, Aristotle conceived of the *polis* in what

was to modern eyes a quite collectivist and unitary fashion. But he also invested it with a recognisable, early republican element.⁴⁹ The security and political order necessary for the practice and learning of virtue was a matter of prudently balanced political institutions. It also depended on the rule of law and on the existence, partly as a result of law, of what we would call a political culture of habitual, reciprocal acknowledgement of obligations. The exact nature of the legal-constitutional artifice and the concomitant political ethos of a political community was not derived from natural law, whether or not Aristotle entertained such a concept, but a much more worldly and contingent matter. Aristotle did not have Renaissance-style intuitions of political fragility and *change*, and his analysis of plural systems remained relatively static. But he did approach a republican idea of the instrumentally necessary virtue of citizens, and one which went beyond the duty to fight for the cause of national survival which was a commonplace in antiquity:

First, the merits of a popular element in a mixed regime based on law derived above all from the danger of despotism, or more generally the propensity of any single stratum (the 'one', 'few' or 'many') to rule in its own interests, if unchecked. The need for *balance*, by a *moderating* democratic element, was necessary to prevent even lawful regimes from degenerating, as they would by their usual fashion.

Secondly, over and above the balancing of interests, there was an appeal to an essentially political type of justification, the rhetorical deliberation of citizens about the most reasonable and soundly working conception of justice, in the form of concrete laws and regulations, its quality depending on the availability and nature of institutions of self-government, arenas for reasoned speech.

Finally, Yack presents a plausible account of Aristotelian justice doctrine as not just a question of institutions, but also of personal behavioural dispositions. Moreover, he distinguishes between the mere propensity to respect rules of justice, and a more important political virtue (Aristotle's general virtue of justice) of seeking the political common good, actually furthering justice, and being on the guard, in everyday intercourses and as a citizen of the *polis*, against *injustices*.⁵⁰

Aristotle's conception of civic virtue and general view of the practice of politics testified to his concern with what was to become a main theme of the republican tradition, namely *political moderation*. As we shall see, Enlightenment critics of the tradition would tend to ignore or deny this aspect, insisting on the unruly, passionate, and decidedly *immoderate* character of classical ideals and political realities, rhetorically reserving moderation for themselves, 'the moderns'. However, if the classical cardinal virtue of moderation or temperance referred to the person's balanced control of his bodily desires, Aristotelian political thought, as most Greek

49. Ironically, much of Yack's book is a polemic against what he - focusing on the communitarian and civic humanist (mis)representations - sees as (civic) republican misreadings of Aristotle, i.e., those focusing on shared political identity.

50. Yack (1993:163).

thought, was very much about the need to balance competing wants and demands of different natural groups in a society. As we shall see, this ambition was also Machiavelli's. But of course his 'moderation', with its acceptance of instrumental, princely cunning, and beneficial *tumulti*, was rather more humanist and modern.

4.3. The Res Publica and Libertas at Rome. Cicero

It has been suggested⁵¹ that a main difference between Greek and Roman republicanism was the former's celebration of political activity as a road to personal virtue and fulfilment - i.e., Pocock's reading of the *entire* tradition - where the latter had more instrumental concerns. The type of reading of Aristotle and his time endorsed above suggests that this contrast is exaggerated. The Ciceronian praise of a patriotic life for the sake of the common good, but also in quest for personal glory, echoes Greek values. And the ultimate concern in politics with liberty in its most basic sense of collective security and equality under law was also at the heart of Aristotle's writings.

The much vaster scale of the Roman *res publica* and the necessary coexistence of quite heterogeneous cultures necessitated an importantly different set of political and legal practices and institutions, as well as a different legitimising political discourse. For most of its history, Rome was never externally threatened, and the need for a spirit of martial vigour was less pronounced than in Greece. Also, while all had to *practice* the state religion and while interference with the lives of citizens was hardly absent, both the ideal of an undisturbed sphere of family and household and the legal institutions to protect them were emphasised to a higher degree than in the Greek world. Rome understood itself as, and for long periods of time succeeded in being, the distributor of peace and security to its citizens and to foreigners with whose countries treaties were signed. This included a significant amount of indifferent tolerance of such private diversity that did not disrupt public morality. Also in marked contrast to Greece, the equality of citizens in the republic was strictly equality under the law. It did not in fact or ideal extend to political equality in active self-government, *isonomia*. The causal link between the exercise of civic duty and the enjoyment of citizenship was more latent and ambiguous, deference to experience and authority in affairs of state was more pronounced, and social hierarchy and class-consciousness among the nobility was more politically potent than in Athens.

Most important for our purposes is the idea of a delineated and collectively guaranteed citizenship status which was first invented in Roman law. This political concept of *Libertas* was the recognisable beginning of an early modern conception of liberty as a formally codified, protected sphere around each individual citizen. The paradigmatic background of the concept was the difference between the citi-

51. Burt (1990:23).

zen, who was unsubjected to anyone's *dominium*, and the slave. It was not at all uncommon in Rome for a slave to enjoy a relatively pleasant life without material worries. Yet, this 'freedom', however wide at any one time, was always enjoyed at a master's discretion, without legal guarantees. A slave could not be a citizen, and hence could not enjoy the legal status of personal immunity from encroachment from other citizens, the security of areas of unimpaired action, and the guaranteed empowerment to certain, limited political activities, which this entailed. The *libertas* of a citizen, of an unsubjected individual, consisted in the capacity to 'possess' such 'rights'.⁵²

The Roman *libertas* was closely linked to *civitas*. It was by virtue of belonging to a political community (Rome) that one could enjoy it, and because of this it was essentially equal and reciprocal. Liberty as the legal assurance of being able to enjoy, to avoid, or to perform certain things - and not just the contingent state, dependant on power and luck, of actually enjoying, avoiding, or performing them - was bought at the necessary price of respecting the same assurance for other members. *Libertas* corresponded to the spaces that were secured for each citizen by the mutual guarantees or insurances, formulated as civil law, the tacit acceptance of which defined membership of the political community. Cicero, completely in line with the common understanding of these matters, sharply distinguished between *libertas* and *licentia*. The latter was only mistaken for the former by fools, or claimed as their 'liberty' by arrogant nobles wanting to be above the law. *Libertas* was conceptually linked to the notion of constraint, not so much, as one might think, to a stoic moral idea of self-restraint, but more to the collectively imposed constraint and discipline of the law.⁵³

52. Wirszubski (1950:1-3). The inverted commas signal that Roman *libertas* cannot, strictly speaking, be rendered as bundles of rights, if these are taken in their modern sense or senses, as claim-rights, liberty-rights, powers, or immunities, whatever the contested intricacies of either meanings (Jones 1994). On the complex origins of modern rights in medieval interpretations of Roman law and the complicated development and related meanings of *ius* and *dominium*, see Tuck (1979). While the Romans probably had no subjective concept of right in a modern sense, their use of objective conceptions of 'what is right' in a certain type of situation, specifying the proper legal relations between parties, clearly ensued in a hitherto unprecedented and thickly textured degree of legal regularity and protection, making up an enforceable citizenship status.

53. Wirszubski (1950:3-15). Cicero's antidote to Hobbes' liberty as the 'silence of the law' was the belief that we are "slaves of the law" in order that we may be free (*legum ... idcirco omnes servi sumus, ut liberi esse possimus*). Indeed, "law is the bond which serves ... our privileges in the commonwealth, the foundation of our liberty, the fountain-head of justice", Cicero, *Pro Cluentio* (p.146). *Licentia*, by contrast, is when "the insatiable throats of the people have become dry with the thirst for liberty", and when without masters and laws the relations of citizens are reduced to anarchy. "[F]rom this exaggerated licence, tyrants spring up as from a root. ... [L]iberty itself reduces a people who possess it in great degree to servitude",

It follows from this Roman understanding of liberty as legal citizenship that it depends directly on the political structure of the state for its amount, its content, and its continued existence. A free people or a free state was defined in terms of sovereignty, i.e., the absence of external dominion which was not a problem for Rome, and in terms of the existence of a *res publica*. Negatively, as a necessary condition which alone might lead to anarchy, this meant the absence of internal domination (of a king). Positively, it meant the existence of a republican constitution. Cicero repeatedly talked of the republic as a "partnership in justice" where justice, closely linked to *libertas* as a common good, was the existence of and respect for equitable laws. The origin of republics was caused by the rational desire of individuals to enjoy the security and liberty which was only realisable on the condition of equality under the law.⁵⁴

As noted, the *libertas* of the Romans was not extended to Greek *isonomia*, even if the notion made sense to them. Cicero, for instance, could occasionally use liberty to denote the government of the republic by the *populus*, and link it to what he considered a familiar (Greek, democratic) argument about the maintenance of collective security, as well as to refer to a state where the *populus* did not partake directly in political affairs, but enjoyed equal rights under the law. The *res publica* was the "property of the people" and had its "beginning" in the decision to live together in justice and common advantage, but Roman evaluations of how this was best achieved were different from the Greek ones. Political equality would not respect the authority, superior intelligence, and *dignitas* of people like Cicero himself, in the crucial tasks of either framing constitutional laws so that they did not conflict with the eternal natural law (whose content could only be grasped in its most general outline), or handling the momentous decisions of war and peace. And, for reasons inherent in democracy - to Cicero the spectre of mob rule - it was likely to lead to chaos and license. On the other hand, kingships and aristocracies did not recognise the need to give the subjects "a share in the administration of justice and

Cicero, *De Re Publica*, I,66-68.

54. "[A] commonwealth is the property of a people (*est ... res publica res populi*). But a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice and a partnership for the common good (*coetus multitudinis iuris consensu et utilitatis communione sociatus*), and "nothing can be sweeter than liberty; but if it is not the same for all, it does not deserve the name of liberty (*si aequa non est, ne libertas quidem est*)". "For what is a state (*civitas*) except an association or partnership in justice? (*iuris societas*)" and "a free people (*liber populus*) ... desires its own safety" (Cicero, *De Re Publica*, I,39,47,49). "For what people have always sought is equality of rights before the law. For rights that were not open to all would be no rights" (Cicero, *De Officiis*, II,42). For the close connection generally between *iustitia*, equal rights under law, and basic physical security, see *De Officiis* II,39-42.

in deliberation". Such regimes might in principle respect justice, but their element of "slavery for a people" was as unwise as the lack of *dignitas* in democracies, from the point of view of *stability*: "before each of them lies a slippery and precipitous path leading to a certain depraved form that is a close neighbour to it".⁵⁵

Cicero's solution - via Polybius⁵⁶ and corresponding to the Roman arrangements even when the republic was most 'democratic' - was a version of Aristotle's mixed regime which had a decidedly conservative and elitist flavour. The small amount of political power granted ordinary citizens effectively amounted to the appeasement needed to maintain the position of the aristocracy with their superior *dignitas*. In developing its elements, details of which do not concern us here, Cicero appealed to the historical experience of his own Rome, even when adding his own relatively minor suggestions in *De Legibus*. The concern with the practically possible under non-ideal circumstances, and with the common good as a 'reasonable' compromise between classes was not unlike that of Aristotle. For instance, Cicero noted the dangers of governance in the unbalanced interest of a single group and the popular demand for fairness and equity in return for their support.⁵⁷

55. Cicero, *De Re Publica*, I,43-44. For the difference between Roman and Greek understandings generally, see Raaflaub (1984). For Cicero's rendering of the Greek argument, e.g., in *De Re Publica*, "in aristocracies the masses can hardly have their share of liberty", "... that all who are slaves whether to a king or to an aristocracy are deprived of liberty" and "popular governments ... [attract us] by their freedom", cp. in *De Officiis*, "a free people, where all enjoy equal rights before the law", and in *De Legibus*, "let the people have their ballots as a safeguard of their liberty (*libertas*) ...". "Therefore every people, which is such a gathering of large numbers as I have described, every city, which is an orderly settlement of a people, every commonwealth, which as I said, is 'the property of the people' (*omnis res publica, quae, ut dixi, populi res est*), must be governed by some deliberative body (*consilio*) if it is to be permanent. And this deliberative body must, in the first place, always owe its beginning to the same cause as that which produced the State itself". But "when all the power is in the people's hands, even though they exercise it with justice and moderation, yet the resulting equality itself is inequitable, since it allows no distinction in rank", Cicero, *De Officiis*, I,88; *De Re Publica*, I,41-43,55; *De Legibus*, III,39.

56. On this relationship, see Fink (1962:5-8).

57. Cicero (*De Re Publica*, II,55). "Therefore I consider a fourth form of government the most commendable - that form which is a well-regulated mixture of the three I have mentioned at first. [A]t the periods of which I have been speaking, the government was so administered by the senate that, though the people were free, few political acts were performed by them, practically everything being done by the authority of the senate and in accordance with its established customs ... But after a short period, in about the sixteenth year of the republic ... an event occurred which in the nature of things was bound to happen: the people, freed from the domination of kings, claimed a somewhat greater measure of rights (*iuris*) ... For you must keep in mind a fact that ... unless there is in the state an even balance of rights, duties, and functions, so that the magistrates have enough power, the counsels of eminent citizens enough influence, and the people enough liberty, this

The twist given by Cicero and other members of his class to the doctrine of mixed government must be seen against the background of the severe struggles that took place in the Roman republic until it was superseded by the *libertas Augusti*, the degeneration of *libertas* to the safety of citizens at the contingent discretion of a benevolent dictator. While Cicero acknowledged popular concerns, his own appeal to *dignitas* over political and social levelling was typical of the views among Roman nobility which, perhaps, lead to the civil strife that eventually discredited the ideal of *libertas* to many citizens.⁵⁸

However that may be, the Ciceronian ideal of politics and conception of civic virtue allocated one place to the ordinary citizen and quite another to the statesman. Both were important elements in the great project of arresting the decline of the Roman republic, and in the more general project of "the formation and preservation of states".⁵⁹ The virtue of the ordinary citizen, on which Cicero spent little time, consisted in obeying the laws and fighting in wars. But in Cicero's world the quality of the populace crucially depended on the virtue of the *statesman*. It was he whose knowledge of political forms and their tendency to decay allowed the best formulation of law, and he who dispensed justice and respected the rule of law so as to win the support of the populace. Moreover, only he, by setting a personal example, could shape or fortify the customs and public opinion which, at the risk of shame, would make citizens respect justice in actual conduct.⁶⁰

kind of government cannot be safe from revolution". "[A]nd always, when the plebeians have been so weakened by the expenditures brought on by public calamity that they give way under their burden, some relief or remedy has been sought for the difficulties of this class, for the sake of the safety of the whole body of citizens". But, "as a result of the injustice of these rulers [the second *decemvirate*] there was a great insurrection, followed by a complete change in the government", Cicero, *De Re Publica*, I,45,II,56-57,59,63.

58. This view is taken by Wirszubski (1950:31-91).

59. Cicero, *De Re Publica*, II,64. Also, "[b]ut though the republic, when it came to us, was like a beautiful painting, whose colours, however, were already fading with age, our own time not only has neglected to freshen it by renewing the original colours, but has not even taken the trouble to preserve its configuration and ... general outlines", *De Re Publica*, V,2.

60. For instance, the statesman "should be given ... no other duties than ... one ... of improving and examining himself continually, urging others to imitate him, and furnishing in himself ... a mirror to his fellow-citizens by reason of the supreme excellence of his life and character". With his knowledge of politics he should be able to orchestrate a harmony as "in the music of harps and flutes" as also "a state [is] made harmonious by agreement among dissimilar elements, brought about by a fair and reasonable blending together of the upper, middle and lower classes ... What the musicians call harmony in a song is concord (*concordia*) in a state, the strongest and best bond of permanent union in a commonwealth; and such concord can never be brought about without the aid of justice". And "the governing statesman strengthens this feeling in commonwealths by the force of public opinion and perfects it by the inculcation of principles and by systematic training, so

Cicero's model statesman⁶¹ was at the heart of an ideal of politics for the select few, and of his statement of the superior value of the active life "of state craft and ... great enterprises [which] is more profitable to mankind and contributes more to ... greatness and renown" compared to "the life of [philosophical] retirement" which is "easier and safer". Its content was described in austere tones of sacrifice and danger, and its tasks should only be undertaken by the person who had been strictly educated in the prudential and moral aspects of its exercise. Yet, for the tiny minority who aimed to secure the material benefits of safety and common liberty without pausing to enjoy it for themselves, the call of duty was sweetened and transformed into a love of the fatherland by the dual reward of worldly recognition and fame and by the "eternal life of happiness" evoked in *Scipio's dream*. This famous passage depicts a hereafter, earned by

all those who have preserved, aided, or enlarged their fatherland ... For nothing of all that is done on earth is more pleasing to ... God ... than the assemblies and gatherings of men associated in justice, which are called States (*civitates*). Their rulers and preservers come from that place [the heavens], and to that place they return⁶²

Cicero may have underestimated the aspirations of ordinary citizens and the disruptive nature of class conflict. He was certainly optimistic in asserting that "[n]ature has implanted in the human race so great a need for virtue and so great a desire to defend the common safety (*communem salutem*) that the strength thereof has conquered all the allurements of pleasure and ease".⁶³ Nevertheless, the Roman ideology of the *res publica* as a partnership in justice and common liberty and the ideal of virtuous activity to sustain it, crystallised in his writings, exercised a tremendous influence on Renaissance and later political thought. However, later writers came to emphasise the limitations of a traditional conception of virtue and the reliance on the wisdom and sense of duty of a few individuals. Yet, also the argument from the point of view of the ordinary citizen, about the need for political

that shame deters the citizens from crime" (Cicero, *De Re Publica*, II,69,V,7).

61. Which loomed larger in his writings than the question of the 'best regime' (Niegorski 1991).

62. Cicero, *De Officiis*, I,70; *De Re Publica*, VI,13). Cp. Cicero, *De Officiis*, I,69-85; II,31. Also, "[L]ove justice and duty, which are indeed strictly due to parents and kinsmen, but most of all to the fatherland (*patria*)". And, stating the *rational* core of the republican idea of *patriotism*, as sacrifice for the sake of a common good of liberty as security, even if the latter is only enjoyed as a momentary refuge for the man of action, "I could not hesitate to expose myself to the severest storms ... for the safety of my fellow-citizens, and to secure, at the cost of my own personal danger, a quiet life for all the rest. For, in truth, our country has not given us birth and education without expecting some sustenance, as it were, from us in return", Cicero, *De Re Publica*, I,7-8,VI,16.

63. Cicero, *De Re Publica*, I,1.

activity to check one's rulers, which Machiavelli and the later tradition was to emphasise, was already found in a rudimentary form in the Roman tradition. It may be found in the recognition that the masses should have "enough [political] rights to found freedom"⁶⁴ for the balance of interests of the mixed government to work for the security of all. It was also latent in the concern about the need of leaders to court the favour of free citizens, casting their non-secret vote.

5. Renaissance Republicanism

Political experience of republican liberty was only renewed with the rise of the city states of the mid-northern Italian peninsula. The economic and political background for the emergence of cities capable of military independence and political authority sufficiently strong to challenge feudal structure need not concern us here. At any rate, around the beginning of the twelfth century a large number of city states had emerged which challenged the European norm in medieval Christendom of the superiority of hereditary monarchy. These republics aimed to check rulers misusing their power by an increasingly wide-spread and ingenious system, whereby a non-resident of the city was elected as the executive *podestà* for a limited period by the body of the citizens, advised by a larger and a minor council, and held accountable for his actions at the end of his tenure. The experience with republican self-government took place and was shaped against a very real, and constantly returning danger of conquest and subjugation by a succession of German invaders and, eventually, by the one-time ally of the papacy.⁶⁵

Recent scholarship on the political thought of the period has revolved to a large degree around Hans Baron's famous thesis of the *quattrocento* birth of *civic humanism* as a very late and completely novel attempt to create a justifying ideology of the city state at a time when internal strife and class-divisions (the rise of a new class of merchants challenging the still quite oligarchic nominations of the *podestà*) had brought all but a few city states (notably Milan and Florence) to accept the seemingly more ordered and peaceful arrangement of a single *signore*. The new ideology, according to this view, arising in the most dangerous hour, contained a new validation of political life, a new discovery of Roman political thought, and an unprecedented attempt to challenge the orthodoxy of divinely sanctioned monarchical rule.⁶⁶

The work of Quentin Skinner⁶⁷ caused this sequence of events to be questioned. Without denying its richness and also certain new emphases and styles of argument, it was at least as important to show the manner in which 'civic human-

64. Wirszubski (1950:83).

65. A general introduction to the history of the period is Brucker (1983).

66. Baron (1988b; 1988c).

67. In particular Skinner (1978).

ists' such as Bruni, and later Machiavelli continued an already existing discourse of republican legitimation whose core was a revival of the Roman idea of *libertas*.

5.1. Medieval Republican Discourse and the Rise of Civic Humanism

The political claims made by the city states against their would-be invaders essentially invoked the Roman notion of liberty as, first, independence (the absence of foreign domination and servitude), and, secondly, republican self-government. With the latter they implied the popular election and control of magistrates, and the existence of republican constitutions specifying the equal rights and duties of citizens before the law, above which no one was permitted to place himself. Moreover, the legal justification of this conception of equal liberty in self-government was in place as a result of the radical reinterpretation of the Roman civil Law of Justinian which had hitherto been seen to underpin the total sovereignty of an emperor, *in casu* the heir to the Holy Roman Empire. Already by the late twelfth century and the beginning of the thirteenth century, jurists (Azo of Bologna and later Bartolus of Sassoferrato) had developed new readings. First, they posited the right to yield power in the rulers who were *de facto* and not merely *de jure* able to be obeyed in a given territory - thus subversively claiming that the Roman *Codex* should be accommodated to the actual existence of a plurality of sovereign states, rather than the other way round. Secondly, they (re)invented a doctrine of popular sovereignty and original consent where the latter, crucially, did not entail abdication of sovereignty by the people, but the right, in the absence of just rule, to retain it.⁶⁸

Quentin Skinner has plausibly pointed out two sources of political theory aimed at vindicating republican liberty in the face of the turn towards the *Signori* around the end of the thirteenth century, both of them providing many of the themes of later civic humanism and Renaissance political thought generally.

The first was the development of rhetorics, first as an art of letter writing and (later) public oratory, aimed at pupils embarking on official careers. Gradually, the focus on formal skill shifted, so that teachers of rhetorics came to view themselves as commentators on civic affairs. Two new literary *genres*, city histories and political advice-books for magistrates, became the media, still subordinated to the formal rhetoric casuistry, of an ideology stressing the need for citizens to rise to defend their liberty and the potential, in contrast to previous history stressing divine providence, for the good leader to lead such efforts, by effectively using rhetorical skills. This Italian *Art Dictaminis* was transformed in a humanist direction with the growing influence of French rhetoric studies which had turned to classical texts, in particular Cicero. This early humanism used the classics not just for instrumental

68. Skinner (1978:6-12; 1993:390-95). For historical evidence on the content of fourteenth century citizenship states, see Riesenbergs (1969).

purposes, but in search for style and literary culture which was seen to have a value in itself. Thus, it was to enrich and enhance the propaganda effect of political writing, by beginning to link the art of governing well with the art of speaking well, and by linking the patriotic willingness to fight for the liberty of the city with a civilised and public way of life.

Maurizio Viroli has pointed out how, in the influential writings of Brunetto Latini (around 1260), the art of politics to be pursued by the elected *podestà* of the city was closely modelled on a long established Ciceronian ideal, also elaborated by John of Viterbo, where the stable existence of peace, justice and civility - the common good for the sake of which "a people gathered to live in the same place under the law" - was brought about and continually secured by the skills of rhetoric persuasion of a virtuous ruler (justice being the most important of his virtues), who made citizens decide to stay together in the first place and to refrain from immoderate claims against one another. The civilising significance of reasoned, rhetorical speech - to a lesser extent also for the *citizens*, who might deliberate on the merits and virtue of the ruler seeking office - came about to Latini, for whom Aristotle's *Ethics* was now available in Latin, by a fusion of the civil wisdom of Roman political thought with the early appropriation of an Aristotelian language of politics as the most noble human activity.⁶⁹

Moreover, this body of writing contained the first (re)statements of the fragility of liberty, concerning the causes of republican vulnerability and the methods of securing its survival. Again echoing Cicero and other Roman writers, the twin dangers that loomed large were faction, internal envy and competition and dominance by the upper classes, and, secondly, excessive private wealth. Such dangers could be remedied only by a commitment by all citizens to bypass individual interests for the sake of the common good of peace and security of the city as a whole. This also, against Ciceronian orthodoxy, introduced the problem of *how* to secure civic virtues in public office, and the problem of their proper range and nature in the heart of the ruler. However, all these suggestions were significantly made in abstraction from questions of the institutional machinery of politics, which were considered of secondary importance.⁷⁰

The second forerunner of renaissance republican discourse had its origins in the late introduction of scholastic *political* philosophy in Italy through the work of Ptolemy of Lucca, Bartolus of Saxoferrato, Remigio of Girolami and, particularly, Marsiglio of Padua. Marsiglio and the others were building on the Thomist reconciliation of Augustinian Christianity and Aristotelian celebration of civic life, but they placed the latter's insight in what they recognised as a more appropriate historical context, namely the Italian city republic, rather than the monarchy which

69. Viroli (1992:26-30).

70. Skinner (1978:28-48).

was still taken for granted by Aquinas, although he had departed from the traditional view of kingly power as natural lordship for fallen sinners. These writers went on to praise republican government and a more radical version of the latent popular consent theory of Aquinas as best suited, under the circumstances, to promote the highest Aristotelian and Christian goal of *pax and concordia*. Agreeing so far with the rhetorical authors, they were, however, less inclined to see private wealth as a problem, and less prepared to give up the connection between traditional nobility and virtue. Yet, also they stressed the danger of civic faction.

The scholastic writers went easier on Cicero and *Scipio's dream* and drew instead on passages of Aristotle's newly available *Politics* which denied politics the absolutely highest standing among human activities. Their focus was not on the best art of persuasion or education of virtue, but on the institutional science of constitutional balancing, with elements of periodic elections of magistrates, strictly delimited executive discretion according to law, and mechanisms securing responsiveness and accountability of the rulers to the ruled. In this literature, according to Viroli, the focus "was no longer the ruler but rather the constitution and the collective life of the city. Political inquiry shifted from the duties and qualities of the political man to the assessment of the comparative merits of political regimes". However, the scholastic touchstone of a good political community, more ambitious than Cicero's civil peace and protection of private security and property, was the *additional* furtherance, for which the former was a necessary condition, of a virtuous collective life in a richer moral (Christian) sense. The scholastic argument for republicanism was a counter attack on apologists of princely rule and on the more orderly liberty it was held to promise. Not only might popular government be rendered more tranquil through the right institutional measures; the same measures were also a better safeguard against the potential arrogance of *signori* who were bound, sooner or later, to forget their duties towards justice.⁷¹

In what, then, consisted the often celebrated novelty of Renaissance political thought on the republic? The difference was not the conception of republican liberty as independence and constitutional self-government, securing and defining civic equality under the rule of law, which was asserted, by the civic humanists of the *quattrocento*, "in a traditional and well-established way".⁷² An additional argu-

71. Skinner (1978:49-65; 1993:395-402); Viroli (1992:33).

72. Skinner cites from Bruni's *Laudatio Florentinae Urbis*, as the "overriding merit of Florence's constitution ... that 'it makes it equally possible for everyone to take part in the affairs of the Republic'" so as to "guarantee that 'everything is directed to the greatest possible extent towards maintaining the liberty as well as the equality of all its citizens'. They are free to criticize as well as to control their government and 'no one has to stand in awe of anyone else's power or capacity to do them harm'. And they are free from any danger of being enslaved by a tyrannical regime, since the involvement of all the citizens ensures 'that the control of the city is always prevented from falling into the hands of one or a few people'" (Skinner

ment for republican liberty was added: Not only was republicanism the only safeguard of liberty, this liberty in turn, enjoyed as a way of life by all citizens, was the precondition for *greatness*. This was a secular ideal to be measured by values which were quite at odds with the scholastic idea of virtuous living as pious contemplation, whereby the just republican ruler, receiving his reward in Heaven, was a Christian man who left his study on the call of duty rather than for the sake of honour and fame.

The heart of the humanist movement informing the Renaissance was a new historicism or sense of discontinuity in relation to previous, classical times, which was prompted by the rediscovery of a large number of hitherto lost classical works. In contrast with the earlier teachers of rhetorics who used classical texts for their own eclectic purposes, attempts were now made to understand, *regenerate*, and imitate the forms and cultural terms (literary, artistic) of meaning now perceived to belong to a radically different era - but one which was superior in value. Petrarch was a key transitory figure in the rediscovery of a *civic* Cicero, and in the eventual complete reversal of the previous, scholastic reading of this author which, misleadingly, emphasised passages in his work which celebrated a contemplative and philosophical life. What was rediscovered and immediately turned into an ideal to be pursued in rhetorical education and, through this, in individual development of what was now seen as a human capacity, was the image of a crowning virtue possessed by the *vir virtutis*, or 'truly manly man'. The nature of this ideal involved, on the one hand, a new belief in the creative and intervening powers of the strong and virtuous individual, capable both of moulding himself and of leaving his mark on the world. On the other hand, it involved a more secular understanding of history, where divine providence was largely replaced by *Fortuna* and the contingent attempts to master it. *Civic* humanism, then, involved a potentially more optimistic view of the capacity of individuals to master their own fate, also in the realm of politics, and the God-like glory and honour to be legitimately expected by those who did so.⁷³

While the basic idea of republican liberty of the humanists was shared by their predecessors, the novel elements brought to the political discourse of the Renaissance by Bruni and his followers should be noted. While the notion of virtue as unconnected with birth and the anti-Augustinean sanctioning of the quest for patriotic glory as a value in itself aligned the concerns of earlier teachers of civic rhetoric with those of the humanists, the latter introduced a significant shift. The appeal

1978:77-78).

73. Skinner (1978:77-101). For the influence of Cicero, see Baron (1988b). According to Agnes Heller, the "chief consideration [for 'Renaissance Man'] was how far he had placed his own stamp on the world ... shape[d] his own destiny, and not just in an ethical sense. The dialectic of man and destiny became the central category of a dynamic concept of man" (Heller 1978:9).

to make politics a glorious way of life and to attain the flourishing of manly virtues - for the sake of both liberty and greatness - was addressed not only to a political elite of potential *podestè*, but to the citizenry at large. The republican government Bruni had in mind, was a *Governo Largo*, not the otherwise celebrated elected oligarchy of Venice. And a major factor in the preservation of republican liberty, now introduced, was a citizens' army, as opposed to mercenary troops. While the relevance of personal security under law was present, it was at times overshadowed by what, in the circumstances, Bruni perceived to be a more compelling appeal to the honourable activity of governing oneself (and not just being independent), and to the generated spin-offs, in particular in the fields of culture and arts, consisting in great accomplishments by great men.

But Bruni and the humanists, despite their sense of contingencies, also introduced a certain negligent complacency as regarded questions of political machinery and institutions. They did so in the highly optimistic appeal to an extraordinary and selfless willingness in the ordinary citizen to sacrifice himself for the sake of honour and glory; and in the downplaying of both the dangers of faction and the corruptive effects of wealth and power. These themes were to come back with a vengeance in Machiavelli's darker account.

5.2. Machiavelli

Whatever the modernity of Machiavelli's conception of (republican) politics, the continuity of the argument about liberty and self-government arguably overshadowed the differences in the gradually more 'democratic' conceptions of the nature, locus, and scope of civic virtue. One may argue, with Baron, that a new political vocabulary appeared with the civic humanist turn to a politics of honour, glory, and fame, and, with Pocock, that it was transmitted to posterity through Machiavelli. But, as in Cicero, the heroic vocabulary of meaning for man's secular pursuits, in both Machiavelli and Bruni, was still inseparably linked to the common good of all of *libertas* in a free state. Bruni was trained in rhetorics and law, and he advocated greatness and liberty.

Thus, it makes a great deal of sense to see the shining moment of civic humanism as an ideological move of legitimation, a touch of glory to political necessity that served to link the awareness of liberty with an appeal to the self-consciously felt superiority of the happy few (the Florentines), who possessed it and were admired by others for the accomplishments - artistic, economic, or military - flowing from the fountains of a free-spirited and independent people. The bifurcation, suggested by Pocock, between a legal and a civic meaning of *libertas* ignores the manner in which collectively secured citizenship in a political community is a straightforward precondition both for the private life of easy enjoyment and for the civic or artistic life of great accomplishment.

Pocock's account of a Renaissance discovery of an ideological conception of secular time in terms of the fragility and contingent character of the republic captures an essential aspect of the mental geography of the period. But to see the fragility of the republic exclusively in terms of a virtuous way of life, as opposed to, and even threatened by, the corruptive language of law and right, is misleading. Indeed, it is exactly in the legal language of the period that the fragile and unnatural nature of the political condition is highlighted. Renaissance uneasiness with natural law or natural rights was predicated on an intense contrast, typical of *Quattrocento* humanism, "between civilisation, for which ... a city was essential, and the rude and barbaric life of a pre-civilised people". Of concern here were not traditional assumptions of the restraints of universal reason addressing untutored human nature, but the contingent *civil* laws imposed by human collectivities upon themselves, in the form of beneficial "social compacts ... necessary for the survival of a society", in order that they might even begin to enjoy the safety of liberty under the equal protection of law.⁷⁴

What we see in Machiavelli is a move towards a statement of the argument which is more robust than that of the humanists, as well as the less dynamic version of the scholastic authors. Less emphasis was placed on intrinsic gratifications and cultural by-products of the activity of self-government, more is placed on the, now intensely Roman, understanding of the superior importance, *for most people*, of security of person, property, and a peaceful private life, as well as on the general wealth and good fortune of the community that follows from this. Most importantly, although this well-ordered state of affairs might at times be enjoyed under a good prince, ruling with just laws in the common interest, Machiavelli undertook a sustained analysis to establish that liberty in private affairs was best secured by political liberty and civic virtue, *despite* the many dangers and problems this involved.

Machiavelli knew that, while only few men wanted power and glory, most individuals preferred "enjoying what one has, freely and without incurring suspicion ... the assurance that one's wife and children will be respected, the absence of fear for oneself". The necessity of linking this general interest in security of home and hearth with civic virtue, as "that common advantage ... which results from a self-governing state" was at the heart of Machiavelli's argument.⁷⁵ In this, and in the closely linked conception of republican liberty as absence of external or internal dominance and existence of republican constitution and self-government, we are on well-charted territory. The wars that must be waged to secure liberty, while allowing the virtuous man his fame, first of all present the spectre, vividly portrayed in some of Machiavelli's literary work, of anarchy, fear and *lawlessness*, and the loss of prosperity and property.

74. Tuck (1979:33,38).

75. Machiavelli, *The Discourses*, I,16, cp. II,2.

Pocock's notion that Machiavelli was unconcerned with law is difficult to maintain. States were created to begin with, again a familiar theme introduced early in the *Discorsi*, in order to have security and peace, and this in turn was further facilitated if "a prince [were] to give them a constitution" (the virtue of whose content was the measure of his own virtue as a founder of cities), or if the people alone could agree to begin "to live as a community under laws [*leggi*]"⁷⁶

In Machiavelli, the 'negative' aspect of republican liberty, which was installed through constitutions and laws and secured by some measure of popular political power, was closely linked, much like in Cicero, to a number of ways in which citizens could enjoy civic equality, not just in the exercise of their right to vote or, occasionally, to deliberate, but to enjoy the same civic status. Being a citizen meant not to be interfered with unlawfully by the powerful; the absence of subjurisdictions in the city, controlled by *gentiluomini*; and having the same chances, based on merit, of social mobility and entry into public office. Machiavelli's very early notion of a state (*stato*) as an instrument to be seized and used for the purposes of its holder unless rigidly checked corresponded to the historical background where nepotism was a major and very immediate concern for the newly risen classes, and certainly for the ambitious Machiavelli himself.⁷⁷

But Machiavelli's Florence, struggling, eventually in vain, for its survival, was not the strong and stable republic which Bruni at least convinced himself to be

76. Further, the chaotic license often attributed to popular rule, according to Machiavelli, is an outcome of the absence of law, and hence "anyone who does not regulate his conduct by laws [*leggi*] will make the same mistakes as the masses are guilty of" (*Discourses*, I,58). In the *Istorie Fiorentine*, Machiavelli distinguished between *servitù* (the lawless rule of the nobility), *licenza* (the lawless rule of the people), and actual liberty under law, *libertà*, with the latter, interestingly, being a possible (if not a regular) feature also of some heavily oligarchic governments. Free cities were "bene ordinate":

Vero è che quando pure avviene (che avviene rade volte) che per buona fortuna della città surga in quella un savio, buono e potente cittadino, da il quale si ordinino leggi per le quali questi umori de' nobili e de' popolari si quietino, o in modo si restringhino che male operare non possino, allora è che quella città si può chiamare libera e quello stato si può stabile e fermo giudicare (Machiavelli, *Istorie Fiorentine*, IV,1).

As in Cicero and in the later tradition, the 'negative', Roman-legal, core point of *libertas* as a bastion against government arbitrariness and breaches of civil peace, is apparent. On Machiavelli's various uses of *libertà* and related terms, see Colish (1971). More generally, it has been shown that the word *ordini* and the related terms *modi*, *leggi*, *costuire* and *costituzioni* may be found 761 times in the *Discorsi*, and also, to a slightly lesser extent, are prominent in Machiavelli's other work (J.H. Whitfield, *Discourses on Machiavelli*, (Cambridge: Heffer, 1969), pp.141-63, cited in Parel 1990:533).

77. Machiavelli, *Discourses*, I,16,I,55; III,28; That this was the nature of the linkage between law, citizenship rights, and the prevailing civism of the Tuscan cities is demonstrated by Riesenbergs (1969).

seeing. Apart from the unprecedented sophistication and detail of his analysis, Machiavelli introduced a quite novel degree of sanguinity and realism to republican discourse. He was intensely sensitive to the frailty of human nature and to the obstacles to motivating a body of citizens to virtue. One may say that he turned the fragility of liberty argument against earlier republican writers' cherished assumptions in a dialectical manner, by showing the civic preconditions of sustaining a fragile liberty to be themselves intensely fragile, and to be so in ways so far unconflicted. Machiavelli saw that self-interest and fear were the rational components of a political common interest of citizens, but he also saw that this rationality needed guidance and reminding. Most individuals by nature, while egoistic and prone to cheating, did not *behave* rationally. They were always likely to choose easy gratifications and short-term solutions, all to their own ruin. And they were certainly not likely to be *moral* and susceptible to respond to the call of duty.

Machiavelli himself subscribed to ideals of manly pursuit of glory. But unlike the more complacent humanists, he could see *both* that such pursuits were potentially dangerous for the republic, *and* that the ideals they incorporated might be necessary as factors of motivation. Moreover, while the ultimate goals of the republic were clear, the means to seek them and the conditions for their prevalence were not. Machiavelli's critique of the Ciceronian ideal ruler, who, far from following the righteous path of dispensation of justice, must also know how, and be prepared, not to be just, is notorious. The Machiavellian dialectic of the lion and the fox will not, however, be discussed here. It corresponds to a more general notion of the political universe, also *after* some republican order has been installed, as naturally fraught with conflicts. These had to be managed through prudence and compromise, and the common good of liberty had to be established and secured in often roundabout ways, none of them leading to perfect harmony.

A free state or republic, in Machiavelli's view, was a state that was able to defend itself against invaders and internal despotism, and hence capable of providing security and prosperity for its citizens. Such a state would stand the best chance of remaining free, if the citizens were sovereign. The populace in power, if disciplined by leaders and in particular by *laws* and public customs, was likely to be "stable, prudent and grateful", less susceptible to rash opinions and reckless action than princes, and more suited, all things considered, to sustain what princes had instituted of laws and institutions. They would be so all the more because, unlike the nobility, they were more interested in liberty than domination, both by virtue of their *umori* and because they could not so easily come to dominate.⁷⁸ The *Discorsi*

78. "If we ask what it is that the nobility are after and what it is the common people are after, it will be seen that in the former there is a greater desire to dominate and in the latter merely the desire not to be dominated. Consequently the latter will be more keen on liberty since their hope of usurping dominion over others will be less than in the case of the upper class. So that if the populace be made the guardians of liberty,

abounds with other, more specific advice on how to keep citizens in shape.⁷⁹ If a republic was in disorder, although the chances might be slim, "a good man" might be able to make a difference, either as a truly eloquent citizen, capable of inspiring and persuading, instilling hope and determination in the hearts of his fellows, or, in the rare cases of a "good man ready to use bad methods", as a redeeming prince with insight into the Machiavellian dialectic of liberty and liberation, of politics and reason of state.⁸⁰

Yet, the virtue of citizens, even helped and supported by all these measures, could not be easily acquired, nor even maintained, once mobilised. In order to imbue the populace with the virtue needed to found republics (in Machiavelli, willingness to fight in wars, exercise of political prudence as sovereign citizens, and vigilant control of *signori*) and to keep it in existence as long as possible, other measures were needed to prevent or counterbalance tendencies towards *corruzione*. Corruption, to Machiavelli, was the tendency of citizens to either forget or fail to recognise their obligations, or simply to free-ride on the efforts of other citizens.⁸¹ One should always expect citizens to be easily tempted by petty rewards and short term gains. They would also be more feeble-minded, or, as a result of Christian teachings, "humble and contemplative", rather than men of action.⁸² Corruption though, again starting in Machiavelli, may also refer to the general political culture of a country, where there might be more or less taste for liberty, awareness of its fragility, and determination to defend it. Two measures countering corruption, discussed by Machiavelli, involved the controlled mobilisation of passion and identification with the city. One was the use of pagan religious rites. The other was participation in civic life, by which, in this context, Machiavelli mainly had in mind military service:

it is reasonable to suppose that they will take more care of it, and that, since it is impossible for them to usurp power, they will not permit others to do so" (*Discourses*, I,5).

79. To note a few: Outlets for civic discords (which may then, crucially, be beneficial) must be provided (*Discourses*, I,4); inequality (existence of an idle gentry) must be checked, lest citizens be alienated (I,55); public indictments of individuals committing offences against the state may pre-empt other such attempts through fear, as well as provide scape goats that take out the steam of public passions (I,7); leaders must take care to show gratitude to citizens (I,28-32); ancient customs must be respected (I,37).

80. Machiavelli, *Discourses*, I,18,58; Ehnmark (1986).

81. "That common advantage which results from a self-governing state is not recognized by anybody so long as it is possessed ... for no one admits that he incurs an obligation to another ..." (*Discourses*, I,16). According to Skinner (1986:243), this "is simply a failure of rationality". This is only so, of course, if we talk of collective rationality. In game-theoretical terms, the problem is exactly that corruption is individually rational. Whether or not the collective efforts of *the others* will sustain liberty, one's own individual contribution is unlikely to make a difference.

82. Machiavelli, *Discourses*, I,42; II,2,60.

Machiavelli's precious Rome partly owed its long life as a republic to the orchestration by its leaders of a pagan religion which served to link the fate of the *patria* and its particular history and possible future with the (possible) favour of deities and with the performance of rites. If religion was to support civic virtue, it had to be a civic religion. Christian teachings, according to Machiavelli, promoted a passive and contemplative character and would channel people's best sentiments in an otherworldly direction.⁸³ Numa, in introducing a religion of his own making (pretending "to have private conferences with a nymph who advised him about the advice he should give to the people"), knew "how much religion helped in the control of armies, in encouraging the plebs, in producing good men, and in shaming the bad". According to Machiavelli, Numa was only doing what every legislator did, realising that, while new laws and institutions were in the interest of the people, and while it was in the people's own interest to make sacrifices for the common good, this might not be readily grasped by the many.⁸⁴ Religion installed fear in citizens; but it was also a manner of securing allegiance and dedication to the fatherland as a common good, by making rites and rituals have "the basis of its life rooted in some one of its [the country's] main institutions".⁸⁵

As regards the second measure, Machiavelli had a distaste for professional soldiers which became a standard element of the republican tradition for centuries to come.⁸⁶ The part-time soldier with his private home, family, and occupation, on one hand, would be the best and most reliable soldier as he would fight bravely and wish to end the war in order to return home. On the other hand, he would also be the best citizen, being confirmed through fighting of the great value and fragility of his city and of the cooperative character of its defence. Military service directed the energy of the citizen-soldier towards the preservation of the republic and provided a noble image of self-sacrifice for the common good of the fatherland that could serve as an inspiration for civic virtue.

83. Beginning in Roman times, and continuing throughout the middle ages, the word *patriotism* lost its meaning of emotional attachment to a particular and temporal fatherland, and was given a Christian meaning, as the allegiance to the Augustinian eternal City of God. With the renaissance and the development of city states, the old, classical, meaning of patriotism began to come back, with Machiavelli detaching it completely from its Christian connotations (Dietz 1989).

84. "Nor in fact was there ever a legislator who, in introducing extraordinary laws to a people, did not have recourse to God, for otherwise they would not have been accepted, since many benefits of which a prudent man is aware, are not so evident to reason that he can convince others of them. Hence wise men, in order to escape this difficulty, have recourse to God. So Lycurgus did, so did Solon, and so have many others done who have had the same end in view" (Machiavelli, *Discourses*, I,11).

85. Machiavelli, *Discourses*, I,11-12.

86. Pocock (1975:195-218).

In *l'Arte della Guerra*, Machiavelli laid out the motivational structure. In Rome, a large number of individuals, including a great many foreigners, were granted civic rights and armed. Being of independent means and private occupation, they were able to link their understanding of their own private good with that of the city. Because of this, and in gratitude for their citizens' status, they devoted themselves to the *patria*.⁸⁷ In Pocock's words, this was a state of "equality" - not in terms of strict economic equality or absence of political authority - but "a state of affairs in which all look to the public good alike".⁸⁸ In Aristotle, citizens discuss common affairs, each from their own perspective. But all perceive a link between their private good and that of the city, and eventually develop a sense of identification and love of the city which then serves them in battle. In Machiavelli's theory of motivation to civic virtue, while he notes the rational core of citizen's enjoyment of rights and security of livelihood, there is more emphasis on the immediacy of war and danger than on deliberation or more peaceful citizens' pursuits. This, incidentally, also commits him to the view that civic virtue requires a policy of military expansion.

For Machiavelli the problem of motivation, to summarise, entailed the need to mobilise belonging and identification with the *patria* as a way of reminding citizens, who quite well know what it is they most prefer,⁸⁹ of the fragility of these goods, of the need for sacrifice to enjoy them, and of the manner in which their enjoyment as a "common advantage which results from a self-governed state"⁹⁰ presupposed solidarity and cooperation, and suggested the need for gratitude and allegiance to the particular republic which facilitated it. One way of providing it was to link this fragility to a sense of sacredness, divine direction, and potential favour; another was based on the most concrete experience of the fragility of the republic in war, which made civic virtue a noble ideal to aspire to in itself.

Machiavelli's account was both the pinnacle and the swan-song of Renaissance republicanism. But it is a mistake to see this fact as a reflection of a changing conception of what was the basic good to be furthered in politics. Pocock has seen a difference between Machiavelli, the advocate of 'positive' liberty, and his contempo-

87. "A prince, who would reign in security, ought to select only such men for his infantry as will cheerfully serve him in War, when it is necessary, and be glad to return home after it is over. This will always be the case with those who have other occupations and employments by which to live" (Machiavelli, *The Art of War*, p.21).

88. Pocock (1975:209).

89. A prince installing himself in a populace that has been kept in servitude, remarks Machiavelli, faces two demands. One is the desire for revenge, which is easily satisfied. The other is freedom. Ordinary citizens, again, "who demand but to live in security ... can easily be satisfied by introducing such institutions and laws as shall, in conjunction with the power of the prince, make for the security of the public as a whole. When a prince does this, and the people see that on no occasion does he break such laws, in a short time they will begin to live in security and contentment" (Machiavelli, *Discourses*, I,16).

90. Machiavelli, *Discourses*, I,16.

rary Guicciardini, the advocate of 'negative' liberty.⁹¹ However, the *Dialogue on the Government of Florence*, written very much up against the *Discorsi*, does not diverge at the level of political ends, but rather as regards the proper means and the overall evaluation of what is the possible 'second-best' in any relevant set of circumstances. Guicciardini's analysis led him to believe that a measure of power abuse and favouritism must be accepted for the sake of the stability that only a single ruler or a restricted group of people could secure, at least under conditions prevailing in his and Machiavelli's Florence.⁹² Accepting this may certainly have come easier to Guicciardini, as a banker who had no personal interest in civic equality. His was an aristocratic temper, and he was less inclined to consider the preferences of the ordinary citizen, although by no means in favour of princely rule and unmerited privilege.

But the main difference between him and Machiavelli lies in the evaluation of the possible role of the people. At one level, the difference regarded the possibility or danger of ignoring the voice of the people and the degree of trust in the collective wisdom and prudence to be found there. In the dominating voice of Guicciardini's *Bernardo*, this trust was indeed low.⁹³ At a deeper level, the difference consisted in Machiavelli's completely new acceptance of conflict as the inevitable material and medium of the generation of political legitimacy and stability. Machiavelli's endorsement, in the *Discorsi*, of civic conflict in Rome as positively beneficial for the health of that republic and the quality of its laws is well known. The acceptance of conflict was far from complacent. However, in the discussions of the *Istorie Fiorentine*, Machiavelli reaches a seemingly opposite verdict, the discord and strife of Florence being exactly the cause of its troubles.⁹⁴

Clearly, there were conflicts and conflicts. Certain behaviour patterns of egoism and jealousy were constants of human nature: people would seek civic equality, and then more substantial equality - partaking in *le robe*, property and wealth. Or

91. Pocock (1981a:356).

92. Guicciardini, like Machiavelli, had no illusions whatsoever about what this meant, for instance in the case of *Cosimo di Medici* (Guicciardini, *Dialogue on the Government of Florence*, pp.24-35).

93. For instance, "apart from lacking the necessary secrecy and speed, all matters that have to be decided by many people suffer in addition from irresolution, since very often there is no agreement and one man's point of view is not another's" ... "Where many people are involved in discussion, there is a danger of corruption; for as private individuals who do not hold the common interest as their own, they can easily be corrupted by promises and princely gifts" ... "This is why I say that the decisions of popular governments are unsound, not only initially, in their beginnings, but in every stage they go through right up to the end" ... "I think the people make more mistakes, because they consider things less, understand less, know less" (Guicciardini, *Dialogue*, pp.62-66). On Guicciardini's complex position, see Viroli (1992:178-200) and Silvano (1990).

94. Bock (1990).

they would, if they could, try to dominate other groups, or at least make sure not to be dominated themselves.⁹⁵ Certain conflicts of interest between classes, certain basic aspirations and *umori* of each that the others would only respect reluctantly, were built into the fabric of the political universe. These tendencies were rules of the game, but the way they manifested themselves was not given. What was not necessary, although difficult to avoid, was the degeneration of conflict into violence, popular participation in government into mob rule, the ambition of the strong into oppression. No one group, with its rational and natural interests (the people in liberty and security, the nobles in honour) must be allowed to overstep its limits, threaten another unduly, and secure privilege and power entirely for itself. This was the stuff of Machiavelli's version of Aristotle's *moderation*.

In good conflicts, reasoned demands and desires were forwarded in a civic, peaceful manner, subjected to deliberation and compromise, thus fine-tuning the law and the common good. Bad conflicts arose when the aspirations of groups, for lack of good laws, leadership, or whatever cause, got out of hand; or alternatively,⁹⁶ as a result of the private or clan-based quests for office and privilege for oneself and one's *amici* through *modi privati*, a tendency which was squarely condemned by Machiavelli. An example of both aspects of the latter in Florence's history was the revolt of the Florentine woolworkers, the Ciompi.⁹⁷ Unlike other commentators, Machiavelli perceived the material background and complete rationality of the events. He condemned the ambition of the Ciompi to exclude their enemies from any political power (thence causing further resentment). But he also saw that this exclusion was a revenge for past injustices and the unwillingness of the other classes to meet the most minimal needs of the *plebs*.⁹⁸

Machiavelli offers no blue-print solutions. There will *always* be conflict, because of the different interests and dispositions of different types of individuals, and there will always be egoism and disregard for the common good. Conflicts may

95. "Ancient writers were of the opinion that men are wont to get annoyed with adversity and fed up with prosperity, both of which passions give rise to the same effects. For, whenever there is no need for men to fight, they fight for ambition's sake, and so powerful is the sway that ambition exercises over the human heart that it never relinquishes them, no matter how high they have risen. The reason is that nature has so constituted men that, though all things are objects of desire, not all things are attainable; so that desire always exceeds the power of attainment, with the result that men are ill content with what they possess and their present state brings them little satisfaction" (Machiavelli, *Discourses*, I,37).

96. This distinction is shown by Bock (1990:196-7), in an important discussion of conflict in Machiavelli.

97. Bock (1990:193-96).

98. Machiavelli's most famous treatment of conflict appears in *Discourses*, I,2-5. Discussing the disrupting conflict which arose from the agrarian laws at Rome, Machiavelli significantly refuses to change his overall opinion. The conflict might have come anyway, it was brought about by a failure to pacify the material aspira-

be civilised and domesticated and egoism may be checked through political measures, but achieving this cannot be reduced to a question of which group should govern, or how a right Polybian balance is achieved. Machiavelli's type of solution is novel because dynamic and conflict-accepting: The people must protect itself from its rulers, but the political community must also be protected from the people's partiality. Civic virtue must be guided, passions tempered, and legitimate interests must be recognised through the right laws, avoiding privilege, enforcing the common interest, institutionalising rational solutions and compromises. At the same time such laws are themselves the outcome of virtue, and there is no absolutely safe and certain way to enter the virtuous circle of a political culture of mutual trust and common advantage.

The compromise, expressed legally as a constitutional settlement, was a dispensation of working, secular fairness, giving something to everybody, defending the weak and minimising the possibilities of the strong to dominate and exercise their greed (but also rendering safe their position and enjoyment of glory). This is what is entailed in Machiavelli's notion of justice, not used often,⁹⁹ as that first important 'basic framework' of political order which must be in place in a republic, although it is temporarily violated by the good ruler who must be able to subsume it, as a principle of action, to more important virtues. And closer to Machiavelli's more usual language, it is the content of the *bene commune*,¹⁰⁰ or the common sensical but loosely delineated notion of a state of affairs, brought about by law and *ordini* and secured in the last resort by citizens themselves, where partial interests and egoism is not allowed to reign, where everybody in their different natural stations may enjoy, be sure to enjoy, and appreciate the enjoyment of, a great good that transcends whatever more or less legitimate claim they may continue to have about a distribution of powers, honours, or offices, more favourable for themselves.

The *bene commune* of shared liberty, whatever its specific constitutional and legal content, is a more political, less transformative notion of legitimacy than Rousseau's *volonté générale*, and unburdened both with the latter's moralism and its Romantic conception of a culturally and spiritually unified people. To a significant extent, it leaves groups and individuals as they are, extracting only a necessary degree of civility and willingness to compromise, but claiming also their loyalty and sacrifice in the name of a common interest that transcends remaining (class) differences - a common good which Machiavelli, to convince Guicciardini and others of his station, contrasted to the servitude of *all* under a foreign power.

tions of the *plebs*, and aggravated by retrospective legislation (*Discourses*, I,37).

99. But see Machiavelli, *Allocution to a Magistrate*, and, for commentary, de Grazia (1989: 190-94), Parel (1990).

100. For the meaning of Machiavelli's *bene commune*, and its close relation to justice, liberty, and (civic) equality, see de Grazia (1989:157-93).

With Machiavelli's hyper-sensitivity to the dangers and contingencies of politics the republican discourse lost its remaining humanist and classical innocence. Machiavelli's optimum political state, the point when a city may enjoy 'happiness', was one of peace, liberty, and danger. Like his predecessors he developed the theme of liberty's dependence on civic virtue: states had to be created, conquest and *signori* resisted, good customs and the spirit of laws reinforced, the remembrance of foundations maintained and renewed. But such virtue in turn was fuelled by a passion and tendency to partiality which threatened to render the cure almost as dangerous as the disease. Securing the right, rational passion - with a constant human nature little given to rationality - was the point; but such a sentiment was a thoroughly artificial product which, although nourished in the citizen militia, itself had to be domesticated and channelled in the right direction. It would be so domesticated by being based on workable constitutional compromises balancing opposing interests and preserving the collective rationality so easily forgotten by individuals, by reinforcement through good laws which were seen as such by the people, and by being hedged in by customs and norms of public civility, tranquillising political conflicts.

Machiavelli's ultimate concern was a united Italy, although his writings do little to suggest the character of such a polity. But it was Guicciardini and his pessimistic views on popular political (in)competence that fit the political moods of the times. In later political contexts in France, Britain, and the United States, the republican discourse of the fragility of liberty came to deal with somewhat different problems. Among them, questions of size and numbers and increasing ambiguity about the content of civic virtue became important. We look at these matters in the following chapters.

CHAPTER 3: REPUBLICANISM IN THE EARLY MODERN STATE

1. Introduction

The eclipse of the Italian city state did not bring total extinction to republican self-government. It survived in various forms in independent cities of Northern Europe. However, after Machiavelli, republican theoretical discourse lay practically dormant for more than a hundred years. In this chapter, we look at three important stages of its modern revival. Here, republicanism becomes formulated in the radically different context of the centralised, post-feudal modern state. In Britain, the discourse became a doctrine of rebellion, but also a way to legitimise a political order which was installed to protect individual *rights*, including property rights. Both aspects were easily adaptable for export to the New World. British republicanism also marked the beginning of a discourse, which had Montesquieu as its classical representative, which tried to meet and accommodate itself to the new language and realities of commercial society. Finally, Rousseau confronted Montesquieu's verdict that *classical* republicanism was unfit for a modern age of large states, making a backward-looking argument in favour of a liberty enjoyed in Spartan simplicity. But Rousseau also formulated an egalitarian individualism which saw the prime danger to be not Montesquieu's modern despotism, as much as the unresponsiveness of states failing to cater for the security, property, and general welfare of the least of their number.

Before looking at each of these republican moments, consider Pocock's account of the period, beginning with the English revival. To Pocock, Harrington was the key transmitter of republicanism to Britain. As "the theorist of the commonwealth of participatory virtue", he would mourn the loss of "fulfilment in the practice of active self-rule". According to Pocock, Harrington was not concerned with property and land out of 'possessive individualism'.¹ Rather, the significance of property had become an extension of the concern with arms in antiquity and in Machiavelli, "[G]od's Englishman was now *zoon politikon* in virtue of his sword and his freehold", and

land was acquired ... in order ... to found families or *oikoi* based on the security of inheritance, which set the sons free to bear arms and cast ballots in the muster of the commonwealth. As with Aristotle, the end of

1. MacPherson (1962:160-93).

land is not profit, but leisure: the opportunity to act in the public realm or assembly, to display virtue²

The period from the fall of the Italian city states to some time before the Glorious Revolution, Pocock acknowledges, was dominated by a "law-centred, king-centred, and God-centred thinking" out of which slowly emerged radical Calvinist revisions of celestial and temporal authority, and questions of when, and in the name of what, a ruler might be resisted. Here, Ciceronian natural law became progressively transformed into a language of popular sovereignty, individual rights as self-ownership and contract. But not only was this "populism" distinct from the language of virtue, its classical formulation in Locke, according to Pocock, signalled the *end* rather than the beginning of its important age. From "1688 to 1776 (and after), the central question in Anglophone political theory was not whether a ruler might be resisted for misconduct, but whether a regime founded on patronage, public debt, and professionalisation of the armed forces did not corrupt both governors and governed; and corruption was a problem in virtue, not in right". To Pocock, liberalism as a dominant political idiom was not so much a part of the revolutionary foundations of modern states as is commonly believed, and the very doctrine of individual rights, because of its incompatibility with accounts of man's capacity for self-knowledge, self-development, and a fully human life, had to fight for its survival.³

In post-Lockean England, "for a century and a half, from the Bill of Exclusion through the American Revolution to the First Reform Act, the secret of English government, and the matter of English political debate, was ... the role of patronage, or, as its enemies termed it, corruption"; and "this was to be discussed in terms of the relation of property to personality".⁴ The danger was "less the encroachment of the executive's constitutional powers on those of the legislative", but rather "its capacity to bring the members of the legislature, and of society in general, into personal, political, and economic dependence upon it". In Andrew Fletcher, Charles Davenant and others who supported *Country* (or *old Whig*) views against the *Court* and the entrenched monied interests around the crown, Pocock traces, in several stages, concerns with the danger of luxury and cultural specialisation, as endemic to liberty and moral independence, and with a standing army financed through public debt. *Credit*, as opposed to land, "symbolised ... the power of opinion, passion and fantasy in human affairs". Trenchard's and Gordon's influentially polemical *Cato's Letters* advanced "a distinctly Machiavellian and neo-Harringtonian critique of corruption and of the republic which is its opposite". Having accepted as

2. Pocock (1975:386,390,397; 1981a:357; 1985b:31). See also Pocock (1971a).

3. Pocock (1981a:363-64).

4. The problem of 'patronage', after the Glorious Revolution, arose from the introduction of a system of public credit, with private lenders of capital to the government incurring dependence on the state for returns and expected favours.

inevitable the existence of trade and the impossibility of a landed commonwealth. Pocock notes that their criticisms (of exclusive trading companies, a parliament populated by investors and landowners incurring dependence through debt) contained few practical suggestions, only moralising calls. However, the point of this (monarchical) republic was to secure that men might be "equal in their opportunity of virtue". Unpolished virtue, it is granted, was now recognised as having to be transformed into *politeness*, and commerce, properly regulated, would do that. The price to be paid for this was "admission that we are governed by our fantasies and passions", however, these passions "now appear as the pursuits of private and particular goods, familiar to us from the whole tradition of Aristotelian politics and ethics", each of them competing but also transformable (when people were forced by political institutions to take a longer view) into "the passion for pursuing the public good". And finally, these blind passions of men could at least momentarily become focused and rationalised by the discipline of a civic activism whose *isonomia* counteracted the corrupting influence of inequalities of fortune, thus "bringing men out of the cave into the sunlight".⁵

Pocock's Montesquieu and Rousseau are cut from much the same cloth. They too, in each their way, exemplify a civic humanism intensely occupied with the conditions of personal authenticity in a modernity characterised by "a chaos of appetites ... flourishing in a world of rapid and irrational change". Montesquieu basically counts as a member of this Anglican family of backward looking civic republicans. While repeating and developing the themes of commerce and passion as conducive, under certain specified conditions of pluralism and competition for power, to a free society (England) and to a refined civilisation, he also recognises and laments the fact that "the ultimate incompatibility remained. Commerce had taken the place of fortune; the republic could not control its own history forever or resist its own corruption".⁶

Finally, Rousseau, who is only briefly referred to in *Moment*, was the

Machiavelli of the eighteenth century, in the sense that he dramatically and scandalously pointed out a contradiction that others were trying to live with (...) it was his role to insist that the contradiction [between virtue and culture] was intolerable precisely at the moment of personal existence⁷

It is useful to note Pocock's description of late civic humanism in contrast to the picture that he paints of the *court* discourse with which it was competing. The latter was founded

5. Pocock (1975:452,468-472; 1985d:66-67).

6. Pocock (1975:486,493).

7. Pocock (1975:504).

upon an ... credit as a measure of economic value and of a psychology of imagination, passion, and interest as the mainsprings of human behaviour. In the place of virtue it stressed the ego's pursuit of satisfaction and self-esteem, and was beginning to explore theories of how the diversities of passionate and self-interested action might be manipulated and coordinated, or might magically and mechanically coordinate themselves, into promoting a common good no longer intimately connected with the inner moral life of the individual⁸

With the exception of Rousseau, I think that Pocock vastly overestimates the degree to which the republican concern with alienation and authenticity was *moral* in its character, and that he underestimates the republican recognition of passion, egoism, and personal interest as an inevitable background to civic virtue. He misses the way that commerce, 'fantasy', and polite society are often perceived as much more than a poor substitute for Aristotelian wholeness of character, so that no clear break in the discourse of human values occurs between for instance *Cato's Letters* or Montesquieu and those that Pocock consider to be their opponents. And while Pocock highlights significant contrasts between the different *means* to secure, protect, and further human value - the power of a mechanically checked executive or the workings of an invisible hand as opposed to the mobilisation and preservation of civic virtue - he fails to acknowledge the towering evidence in the republican writers of the period, including Rousseau, of common *libertas* as the constant, shared concern.

2. Early English Republicanism

What was the nature of *anglicised* republicanism? In the pre- and postrevolutionary writings of English republicanism, three exemplary high points stand out, although the period was densely populated with political voices. With Harrington's *Oceana* (1656), the Italian Renaissance was imported to England. With *Cato's Letters* (1720-1724) by John Trenchard and Thomas Gordon, and with Algernon Sidney's *Discourses Concerning Government* (1698), republicanism was being prepared for export to America. The latter writer, executed in 1683, fifteen years before his work was published, also provided republican discourse with a noble martyr, often referred to by American writers.

I believe Pocock's picture is deficient in several, by now familiar respects. In their different ways, Harrington, Sidney, and the authors of *Cato's letters* were seeking means to safeguard a republic of common liberty, rather than lamenting a bygone age of Aristotelian virtues. Their contexts and agendas were somewhat diverging. Harrington, implicitly calling upon Cromwell to institute an agrarian republic, was one of the first to suggest a form of representative system of govern-

8. Pocock (1975:487).

ment with extended suffrage and division of powers, coupling this (unlike the more radical *levelers*⁹ before him) with an Aristotelian analysis of (landed) property and political equality as the basis of political power and stability, and with a classical and Machiavellian analysis of mixed government and the natural dispositions of classes.

Sidney, opposing absolute monarchy after the restoration in 1660 and refuting, like later on Locke, Filmer's *Patriarcha* on the paternal legitimacy of kings, combined a radical republican defence of self-government and rights of resistance as the bulwark of constitutionalism with an early individualist account of natural liberty and derived rights which is close in some ways to the *Second Treatise*.

And Cato, writing some time after the Glorious Revolution and marrying Sidney's republicanism to a defence of constitutional monarchy, combined complete acceptance of the beneficial effects of commercial society with a spirited attack on political corruption and unaccountable magistrates abusing their powers and positions in a such society for personal gain.

In each their contexts and with slightly different emphases these authors combined a clearly republican language of active citizenship and fragile political order, of *virtue* and *corruption*, with acceptance of commerce and private interest, recognition of natural law, and doctrines of popular sovereignty and consent, all of which entangled republican discourse much more with 'liberal' ideas than Pocock and others have been inclined to admit. We return to this point in the following chapter. Here, without embarking on any comprehensive exposition of the respective political projects of the three authors, a number of points may be made.

First, the equal liberty they sought was *libertas*. Harrington, on the first page of *Oceana* distinguished between ancient and modern prudence, the former being

an art whereby a civil society of men is instituted and preserved upon the foundation of common right and interest, or (to follow Aristotle and Livy) it is an empire of laws and not of men

as opposed to the modern art "whereby some man, or some few men, subject a city or a nation, and rule it according unto his or their private interest".¹⁰ Directed, not least, towards the monarchical apology and impatient anti-republicanism of Hobbes, Harrington stressed the difference between liberty "by the laws" and liberty "from the laws", the latter being insecure individual *licentia*, the former being the legal status of independence and immunity that a commonwealth of citizens, depending on its prudence, was able to institute for itself.¹¹ Sidney, echoing Harrington

9. Wooton (1992).

10. Harrington, *The Commonwealth of Oceana, The Political Works of James Harrington* (p.161).

11. The passage is worth quoting:

ton and Machiavelli, noted the absurdity of Filmer's view that kings placed above law could ever govern "for the people's good, and the preservation of their liberty", as the blessings of a good king could not be relied upon:

he is a slave who serves the best and gentlest man in the world ... and he does serve him if he must obey his commands, and depends upon his will

and

we have no other way of distinguishing between free nations and such as are not so, than that the free are governed by their own laws and magistrates according to their own mind...[and] [h]e is a free man who lives as best pleases himself, under laws made by his own consent¹²

To Cato, finally

Liberty is to live upon one's own Terms; Slavery is to live at the mere Mercy of another; and a Life of Slavery is ... a continual State of Uncertainty and Wretchedness, often an Apprehension of Violence, often the lingering Dread of a Violent Death

The authors return, in a similar vein, again and again to the contrast between arbitrary power and the common liberty secured by constitutional law.¹³

Nor was the purpose of liberty under law an unfamiliar one. To Sidney "the ends of government" principally included the "preservation of the whole people ... the defence of the liberty, life and estate of every private man", and meeting them

The mountain hath brought forth, and we have a little equivocation! For to say that a Lucchese hath no more liberty or immunity from the laws of Lucca than a turk hath from those of Constantinople, are pretty different speeches. The first may be said of all governments alike, the second of scarce any two; much less of these, seing it is known that *whereas the greatest bashaw is a tenant, as well of his head as of his estate, at the will of his lord, the meanest Lucchese that hath land is a freeholder of both, and not to be controlled but by the law; and that framed by every private man to no other end (or they may thank themselves) than to protect the liberty of every private man*" (Harrington, *Oceana*, pp.170-71, italics added).

Pocock significantly, but highly unconvincingly, wants the passage to show that "the vocabulary of the law [sic] is almost wholly lacking from Harrington's discourse - he held that there was in the human animal something ... which required fulfillment in the practice of active self rule" (Pocock 1981a:357).

12. Sidney, *Discourses Concerning Government*, III, 19. In his *Court Maxims*, Sidney developed a comprehensive doctrine of religious toleration and freedom of consciousness which was close to Locke (Houston 1991:122-30). As noted by Houston, championing this particular set of private immunities fits poorly with Pocock's and others' insistence that (English) republicans were exclusively concerned with 'positive' liberty.

entailed that "publick safety be provided, liberty and propriety secured, justice administered, virtue encouraged, vice suppressed".¹⁴ Trenchard and Gordon spoke, in Lockean language, of liberty as,

the Power which every Man has over his own Actions, and his Right to enjoy the Fruit of his Labour, Art and Industry, as far as by it he hurts not the Society

By leaving people alone "they will take care of themselves, and do it best", not least in the area of religious freedom and freedom of conscience and speech. Liberty includes "thinking, saying, and doing what we please", even practising honest commerce whereby populations will increase in number and wealth and individuals may

grow ... as rich as we can, without any other Restrictions than that by all this we hurt not the Publick, nor one another ... [These] are the glorious Privileges of Liberty; and its Effects, to live in Freedom, Plenty and Safety¹⁵

Secondly, virtue was not a question of displaying innate human excellences or capacities in political activity. Rather, it consisted of the types of dispositions that helped to secure the commonwealth. The structure of civic virtue conducive to this was a mixture of old and new features:

Harrington, Pocock's neo-Machiavellian *par excellence*, in some ways departed the most from his mentor, not by stressing the tendency to selfishness and short-sightedness of individuals (certainly also acknowledged by Machiavelli), but in proposing a rather static machinery of counterbalancing self-interest. Retaining the classical language of mixed government and distinct *humori* of the nobles and the people (only the former being destined to lead and deliberate), and stressing the necessity of agrarian laws preserving the equalisation of freehold property in England, Harrington made much less of the Machiavellian analyses of popular activism, the need to counter corruption through renewal of civic virtue, or Machiavelli's famous endorsement of civic strife and passion.¹⁶

Harrington had in mind a distinct system of government for Cromwell as The Great Legislator to install. Magistrates would be elected by secret ballot, and frequent rotation in office would help ensure that they remain uncorrupted. Most importantly, he constructed a mechanism which he believed would further the common interest of the commonwealth despite the inherent tendency of all individuals to pursue their own. Essentially equating reason with interest, and "right reason" with "the reason of mankind" which, in turn, was "the interest of popular govern-

13. Trenchard & Gordon, *Cato's Letters*, 62; cp. 23,24,25,33.

14. Sidney, *Discourses*, III,21; cp. I,10, II,20.

15. Trenchard & Gordon, *Cato's Letters*, 62.

16. For similar conclusions, see Sullivan (1994:76-87) and Burt (1990:30).

ment", he proposed a mechanism of 'dividing and choosing' to create a beneficial structure of public transparency in lawmaking. An aristocratic senate would deliberate and propose legislation, and an indirectly elected body of popular representatives would accept or reject it:

The wisdom of the few may be the light of mankind, but the interest of the few is not the profit of mankind, nor of a commonwealth; wherefore, seeing we have granted interest to be reason, they must not choose, lest it put out their light; but as the council dividing consisteth of the wisdom of the commonwealth, so the assembly or council choosing should consist of the interest of the commonwealth

and, in *The Prerogative of Popular Government*:

because every man hath an interest what to choose, and that choice which suiteth with every man's interest excludeth the distinct or private interest or passion of any man, and so cometh up onto the common and public interest or reason¹⁷

While Harrington employed the categories of republican discourse and identified virtue as whatever was needed to secure the common liberty of all, his view of human nature and his hedonistic moral psychology put him rather apart from previous writers. Virtue, equated with securing the common interest (or the balancing of the distinct interests of the one, the few, and the many), appears to have been a mechanically generated systems resource, where the pursuit of private interest was hedged and channelled. All but lost here were notions of corrupt and egoistic citizens trying to better themselves, seeing their own interests as linked with that of all, and aspiring to enjoy the esteem of fellow citizens by defending the latter. In several ways, Harrington's mechanically perpetuated system of mutual surveillance was closer to the spirit of seventeenth century rationalist constructivism than to Machiavellian secular humanism.

Also Sidney and Cato were aware of the force of private interest, yet their conclusions were significantly different. Sidney squarely noted that,

all governments are subject to corruption and decay; but ... absolute monarchy is by principle let onto ... it; whereas mixed or popular governments are only in a possibility of falling into it: As the first cannot subsist, unless the prevailing part of the people be corrupted; the other must certainly perish, unless they be preserved in a great measure free from vices

His virtuous citizenship consisted in popular self-government, though not in a sense "where the people in themselves, and by themselves, perform all that belongs

17. Harrington, *Oceana* (pp.171-73); *The Prerogative of Popular Government, The Political Works of James Harrington* (p.416).

to government, I know of no such thing, and if it be in the world, have nothing to say for it". As the sensible aim of all must be to "set up those who seem to be best qualified", an uncorrupted populace would "never advance unworthy men, unless it be by mistake, nor willingly suffer the introduction of vices". Apart from choosing wise representatives, popular vigilance was necessary to protect citizens from the arbitrariness of magistrates, and to resist unjust rulers "breaking the yoke he lays upon them ... [and] trust one another in ... [a] generous design for the recovery of their liberty.¹⁸

Like Harrington, Sidney stressed the importance of constitutionalism and separation of powers to check corruption. He appealed to the ancient liberties of the Magna Charta, which he saw as guaranteeing the legislative powers of parliament and as placing the king under the rule of law.¹⁹ But unlike Harrington, and in radical opposition to his statically perfect political architecture, Sidney developed a doctrine of revolution whereby the people, subject to the same limitations (last resort, continued abuses) as in Locke's parallel statement, retained sovereign discretion to change the shape of government, which they had, at any rate, instituted themselves.²⁰

However, civic virtue, to Sidney, was more than popular prudence in the election of magistrates, resistance against unjust rulers, and the propensity of these magistrates and rulers to honour the trust placed in them. Like Machiavelli, he also lauded martial courage and vigour against the corruption of weakness and laziness. However, his conception of virtue was also linked to personal honesty and integrity, as evidenced particularly in the propensity to respect the rights and liberty of others.²¹

Civic motivations in Sidney's account were different from Harrington's. Rather than equating 'interest' and 'reason', he placed the former alongside the private passions that corrupt the judgement of magistrates and people alike. Acknowledging the force of both narrow self-interest and those blind passions which places men in a condition no better than slavery, he after all maintained, again rather like Locke, that "reason ... is his nature". And, as in Locke, natural reason was also practical reason, according to which it is irrational to make oneself an exception to a general rule.²²

18. Sidney, *Discourses*, II, 19.

19. Sidney, *Discourses*, III, 8, 13-14, 27.

20. Sidney, *Discourses*, III, 36.

21. Sidney, *Discourses*, II, 21-23.

22. [R]eason enjoins every man not to arrogate to himself more than he allows to others, nor to retain that liberty which will prove hurtful to him; or to expect that others will suffer themselves to be restrain'd, whilst he, to their prejudice, remains in the exercise of that freedom which nature allows. He who would be exempted from this common rule, must shew

The chief and crucial difference to Locke was that Sidney insisted on integrating the account of natural and divinely installed reason in a republican discourse of virtue and corruption. Sidney was not appealing to a community of virtue as reason, but only hoped to protect the public realm from the effects of the free reign of passion. The corrupting effects of unaccountable power in a monarchy were certain and would occur, with few and saintly exceptions, in the case of the ruler himself. But a corrupt ruler would also, in turn, see to it that his people were *kept corrupt* through strategies of courtly distribution of honours and favour, and by always placing vanity and personal interest above that of the public. The propensity to act with reason rather than be driven away by one's passions and private interests should be facilitated, apart from constitutional balancing, by the impartial and cooling discipline of law.²³

However, Sidney also retained a Machiavellian view of dispositions to virtue. The more martial and pagan virtues of public vigilance and civic courage, unlike those of self-restraint and impartiality, inherent in a free and active way of life, were *themselves* contingent products of such a life, which socialised citizens to curb their fears and their inclinations towards easy pleasures. Just as liberty in a state and from the bellicose ambitions for empire of other states required men that were not docile sheep tended by a good shepherd king, falsely pretending his private interest to be theirs as well, so the willingness to defend the common liberty was a consequence of the, by now familiar, linking of private interest, public interest, and the public esteem placed on valiant action for the common good of all. Sidney emphasised, first, the familiar republican theme of incalculating virtue through education and the creation of a structure of expectations,

man naturally follows that which is good, or seems to him to be so. Hence it is that in well-govern'd states, where a value is put upon virtue, and no one honoured unless for such qualities as are beneficial to the publick, men are from the tenderest years brought up in a belief, that nothing in this world deserves to be sought after, but such honours as are required by virtuous actions: By this means virtue itself becomes popular²⁴

Secondly, in a section which makes much of the Machiavellian argument from the *Arte della guerra*, and broadens it to encompass not only military, but also civil affairs, Sidney noted that,

for what reason he should be raised above his brethren (Sidney, *Discourses*, II,20).

See Houston (1991:133-34), and Locke, *Second Treatise*, II,5.

23. Sidney, *Discourses*, II,19. On this point see Houston (1991:147-57).

24. Sidney, *Discourses*, II,25.

men can no otherwise be engaged to take care of the publick, than by having such a part in it, as absolute monarchy does not allow; for they can neither obtain the good for themselves, posterity, and friends, that they desire, nor prevent the mischiefs they fear, which are the principal arguments that persuade men to expose themselves to labour or dangers

and

in a popular or mixed government ... [e]very one has a part ... all changes are prejudicial to all: whatsoever any man conceives to be for the publick good, he may propose in the magistracy, or to the magistrate: the body of the people is the publick defence, and every man is armed and disciplin'd: The advantages of good success are communicated to all, and everybody bears a part in the losses. This makes men generous and industrious; and fills their hearts with love to their country: This, and the desire of that praise which is the reward of virtue, raised the Romans above the rest of mankind²⁵

Cato echoed Sidney (who was quoted at length) in the account of virtue as including honesty, natural reason and law abidingness, all helped along by constitutionalism and the rule of law. But Trenchard and Gordon also repeatedly argued against too much, or the wrong kind of political *moderation*, to the effect that "[p]olitical Jealousy ... in the People is a necessary and laudable Passion", and that an excited popular opinion was nevertheless usually capable of sound judgement, even in single cases, in the face of gross power abuses such as the South Sea scandal. They also placed a specific emphases on the *political* importance of freedom of speech and of the press as means of securing public criticism and scrutiny of the executive.²⁶

Trenchard and Gordon joined both Sidney and Harrington in acknowledging people's natural inclination towards selfishness, but followed a middle road between the two's accounts of civic motivations. Like Sidney, they stressed the link between private and public interests, not as a matter of institutional design preventing or taming passion (Harrington), but in terms of a spirit of rational patriotism, shared by all, given the right circumstances. Patriotism thrived on the experience of liberty, as no "Men in Bonds ever fight bravely, but to be free". As a concept it is simply defined as "one Man's Care for Many and the Concern of every Man for All", and linked to the rational understanding that one's duty is also, in the long run, one's own interest, as

Every Passion ... is selfish in some Degree ... (...) when we call a Man disinterested, we should intend ... that the turn of his Mind is towards

25. Sidney, *Discourses*, II, 21.

26. Trenchard & Gordon, *Cato's Letters*, 33.

the Publick, and that he has placed his personal Glory and Pleasure in serving it. To serve his Country is his private Pleasure; Mankind is his Mistress, and he does good to them by gratifying himself²⁷

However, *Cato's Letters* in another respect, and in most places were closer to Harrington than Sidney, namely in their rather facile assumption about the potential accommodation of the most important private interests with those of the public,²⁸ and correspondingly on the futility and irrelevance of any moral transformation or education in the motivation to civic virtue. Like Sidney and Machiavelli, they did stress the politically beneficial effects of a private craving for public esteem, but the normative horizon in the former writers, of civic maturity and ultimate sacrifice, was all but gone.

Cato's Letters also in one more way signalled a significant change of emphasis. Both Harrington and Sidney retained the traditional concern that civic equality must be protected through economic independence, but corruption avoided by preventing excessive wealth, all with the help of Harrington's *agrarian law*.²⁹ Trenchard and Gordon were more ambiguous. They did allude to the virtues of Harrington's agrarian law, and to the dangers and imbalances of accumulated property. But they also portrayed the ability to prosper and even grow rich through trade as one of the beneficial effects of liberty, and one that did not necessarily jeopardise this liberty.

The third and last point to note about the English republicans, and one which severely blurs the contrast conventionally made to liberalism, was the emergence in all of these writers of doctrines of consent, natural law, and natural liberty in a state of nature. These elements are part of an individualised and moralised language of popular sovereignty which is new to republican discourse.

Harrington's language was still rather traditional in its emphasis on naturally differentiated groups with each their virtue and each their capacity for judgement. Yet, his discussions of the common interest of mankind as 'right reason', coupled with his appeals to scripture, suggests an embryonic idea of certain extrapolitical standards of equity.³⁰

Interestingly, however, the new doctrines were most evident in Sidney, who was otherwise the more classical of the three republicans. Throughout the *Discourses*

27. Trenchard & Gordon, *Cato's Letters*, 33,36,40,62.

28. Burt (1990:31) also makes this point.

29. Harrington, *Oceana* (pp.180ff).

30. Harrington, *Oceana* (pp.172-73). Wettergren (1988:673-79) has attempted to show that Harrington's work contains an early theory, a mixture of Hobbes, Grotius, and Hooker, of natural law and natural rights, but the case may be overstated. At any rate, there seems to be a degree of contrast between Harrington on the one hand and Sidney and Cato on the other.

he repeatedly stated that man is naturally free and endowed by God with reason;³¹ that government receives its only possible legitimation through the consent of the governed who place their trust in elected magistrates to protect their liberty;³² that once this trust is violated, the people as individuals protecting their interests have a right to change their magistrates or revolt;³³ and that natural liberty, although rendered secure and valuable under the rule of law, is strictly speaking diminished in society.³⁴

All this suggests, again, that the Pocock tradition is simply wrong in assuming that a republican virtue language was incompatible with appeals to a trans-historically legitimated, inherent value of the individual, or with a derived natural and equal capacity for reason. Sidney's position, in many ways so close to Locke, significantly highlights the *fusion* of republicanism with natural law - and not, again, a necessary tension or conflict between the two - which was to feed into American republican discourse. The institution of government through consent was the attempt to secure, in real history, whatever approximation to man's natural liberty of which humanly inadequate reason was capable. Sidney's doctrine of revolution was *neither* a reduction to 'original principles' in the classical sense of checking cyclical corruption through the renewal of a mythical beginning that instituted liberty along with political life as such, *nor* was it a strictly Lockean appeal to an immutable set of individual rights, established by contract but conforming to divine will, which had been wronged. Rather, it was the application of popular prudence to the task of *new* beginnings, securing the, by now morally conceived, right to liberty of all humans, under changing political circumstances.³⁵

The crucial difference between Locke and Sidney, here, was in the manner that natural reason, natural right(s) and the significance of God as creator were conceptualised. As summarised by Houston,

where Locke drew attention to the sheer fact that God created men and women, Sidney pointed to the fact that he created them free; when Locke relied on God's workmanship to link men and women to a fairly robust theory of natural law, Sidney pared the claims of "God and Nature" to a minimum³⁶

Locke installed for liberal posterity a moral vocabulary of universal rights and duties, also closely connected to his innovative theory of property (of which there is no trace in Sidney). Those were rational derivatives of how God's intentions for man

31. Sidney, *Discourses*, II,20, III,33.

32. Sidney, *Discourses*, I,20, II,5-6, II,20, III,9,13.

33. Sidney, *Discourses*, III,20,36,42.

34. Sidney, *Discourses*, I,10.

35. This point is also persuasively made by Houston (1991:218).

36. Houston (1991:112-13). Houston builds his argument here on the Locke scholarship of John Dunn and James Tully.

could be instituted in civil society. Unlike Locke, whose work is discussed in the next chapter, Sidney was not really interested in moral grounding of values. He merely appealed to the for him self-evident fact that God's intention could not have been for some men to be the slaves of others, or for some individuals to make themselves exceptions to the basic enjoyment of security and self-directedness that everybody rationally preferred. Exactly what should be the constitutional structure of mechanisms and rights securing this natural liberty, was an open and historical question. And popular consent, rather than an original and determinate act of contractual subsumption under rational principles, was a recurring dispensation of popular prudence in political designs;

the wisdom of man is imperfect, and unable to foresee the effects that may proceed from an infinite variety of accidents, which according to emergencies, necessarily require new constitutions, to prevent or cure the mischiefs arising from them, or to advance the good that at first was not thought on (...) Changes ... are unavoidable, and the wit of man can go no farther than to institute such, as in relation to the forces, manners, nature, religion or interests of a people and their neighbours, are suitable and adequate to what is seen, or apprehended to be seen

While "God ... hath left all things to our choice, that are not evil in themselves", there are however "some universal rules ... in politics ... which ought to be observed: and wise legislators adhering to them only, will be ready to change all others as occasion may require, in order to the publick good". They are about "justice, charity and truth, which having its root in God is subject to no change".³⁷ As we shall see in the following chapters, this politically contingent use of natural law and constitutional consent theory is closer to Jefferson, Paine, and Madison, than it is to Locke.

3. Montesquieu

According to Judith N. Shklar, "Montesquieu did for the latter half of the eighteenth-century what Machiavelli had done for his century, he set the terms in which republicanism was to be discussed".³⁸ In many ways, Montesquieu was a key figure (like Hume) in the Enlightenment *critique* of the classical republicanism of 'the Ancients'. In other ways, his work stands at the beginning of a new, modern era of republicanism for which, at any rate, *The Spirit of the Laws* became a standard reference and theoretical resource. As we shall see, the positions of Rousseau, the Federalists, and Tocqueville are all in different ways reactions to, or elaborations on, the views of Montesquieu.

37. Sidney, *Discourses*, I,6, II,17.

38. Shklar (1990:265).

In one respect, Montesquieu's agenda was similar to that of Machiavelli. Like the latter, Montesquieu connected liberty to the value of personal and private security and the absence of fear. Political liberty (the term used, somewhat confusingly in light of later conventions, by Montesquieu) was not the same as license or independence ("doing what one wants"). Nor was it to be confused with self-government ("the power of the people has been confused with the liberty of the people"). In Montesquieu it meant two different, but closely related things:³⁹

First, as a constitutional-legal concept it was "the right to do everything the laws permit", or the state of affairs when "[a] constitution can be such that no one will be constrained to do things that the law does not oblige him to do or be kept from doing things that the law permits him to do". This equality of all citizens under the law and protection from arbitrary power was a function of the basic constitutional arrangement of a state, and it was approximated, according to Montesquieu, only in England. Main elements defining such liberty included the separation, in a number of ways, of legislative, executive and judiciary powers, frequently convened representative bodies, some aspects of mixed government such as more than one chamber, absence of permanent professional armies, and, most importantly, the existence of an independent judiciary and the use of codified law.⁴⁰

Secondly, whether what was established with constitutional arrangements became translated to freedom "in fact and not in right" in "its relation to the citizen" was another story. From the latter's point of view, liberty "consists in security or in one's opinion of one's security". Freedom in this sense could be a function of mores and manners and specific civil laws, and above all it was dependent on the nature and working of criminal law and legal proceeding. It was not *only* a matter of the private spaces of legally defined immunity, but *also* - making this a part of the very definition of liberty was a conceptual novelty - of the subjective experience of 'safe' liberty.⁴¹

Montesquieu's departure from the political universe of Machiavelli was after all significant. As summarised, again, by Shklar,

Machiavelli's contempt was directed at the incompetence of the petty rulers of the Italian city states, while Montesquieu excoriated the absolute monarchy created by Louis XIV. His great fear was not political impotence, but despotism, a regime to which Spain was rapidly descending and to which France might fall prey⁴²

In Montesquieu's contemporary universe, coercive political (and religious) authorities could only too easily establish themselves, and do so, not just as the transient

39. Montesquieu, *Spirit of the Laws*, XI,2-3.

40. Montesquieu, *Spirit of the Laws*, XI,3-4,6.

41. Montesquieu, *Spirit of the Laws*, XII,1.

42. Shklar (1990:265).

tyrannies of individual Renaissance princes, but using modern, administrative apparatuses, and being capable of creating and maintaining effective institutions of interference and surveillance. This negative frame of reference, real existing (Spanish, Asian) despotism rather than pre-political chaos, made Montesquieu include the former as a separate category of government, towards which both republics and monarchies were prone to drift. Indeed, "despite men's love of liberty, despite their hatred of violence, most people are subjected to this type of government". Compared to the difficult task of legislators engineering and maintaining a moderate regime "a despotic government leaps to view, so to speak ... as only passions are needed to establish it, everyone is good enough for that".⁴³

But despotism was also related to a psychological state of mind. It was characterised by *fear* (*crainte*) as an individually and socially paralysing state of foreboding, arresting the will, making all enjoyment of life impossible. While the avoidance of fear was central to Machiavelli as well, Montesquieu's sensitivity towards the several dimensions of private security marks an Enlightenment departure from the elitist moral universe of Renaissance Man - the risk-taking *vir virtutis*. Hence, Montesquieu was concerned with minimising the coercive and cruel aspects of punishment, with the social and cultural consequences of specific laws in terms of experienced security or insecurity, and with the comparative science of how and where one form of legislation rather than another would be appropriate. Generally, he wished to exclude from civil law all reference to punishable religious crimes, restrictions on the liberty of thought, speech, and writing, as well as 'crimes against nature' in the spheres of family relations, private conduct, even sexual affiliation. Punishments should fit the 'nature' of the crime, and often public ridicule and shaming might serve. Finally, Montesquieu was opposed to the authority of the church whose strategic nourishing of prejudice, intolerance, ignorance, and threats of condemnation all contributed towards a public climate of passivity, isolation, impotence and fear - all in turn further facilitating despotic forms of government.⁴⁴

Also, while Machiavelli ambiguously maintained the need and the danger of martial spirit, Montesquieu unequivocally regarded this type of *passion* negatively. Always dangerous in republics (conducive to Rome's downfall), the obsession with glory through imperialistic enterprises was found at every European court and had regularly devastating consequences for civil populations.

Although Montesquieu considered republican government a highly relevant category in a theory of comparative law, and although he was far from untouched by the images of moral purity and simplicity readily available from his own classicist background, he was also quite unequivocal in his dismissal of a political order based on republican virtue as a viable modern option. In the ancient republic -

43. Montesquieu, *Spirit of the Laws*, V,14; Shklar (1987:85).

44. Montesquieu, *Spirit of the Laws*, VI,12, XII,4-30, XIV, XIX.

Montesquieu significantly referred to Sparta and Crete - it was clear that a government based on widespread and frequent popular participation in the election of leaders and even the shaping of laws, presupposed a public ethos or *principle* of virtue, defined as "love of the homeland [*patrie*], that is love of equality". And the carrier of this political virtue, *l'homme de bien politique*, was "the man who loves the laws of his country and who acts from love of the laws of his country". Moreover,

political virtue is a renunciation of oneself, which is always a very painful thing (...) This love [of laws and fatherland], requiring a continuous preference of the public interest over one's own, produces all the individual preferences; they are only that preference

and,

Virtue ... is a feeling and not a result of knowledge (...) The less we can satisfy our particular passions, the more we give ourselves up to passions for the general order. Why do monks so love their order? Their love comes from the same thing as makes their order intolerable to them (...) Love of equality ... limits ambition to a single desire ... of rendering greater service to one's homeland than other citizens ... At birth one contracts an immense debt that can never be repaid⁴⁵

In his description of the ancient republic, Montesquieu introduced what was to become orthodoxy: that republican government required circumstances which were difficult to secure even in Rome and Greece. Chief among them was very limited size - although this in turn made it militarily vulnerable - or, when this was not possible, the form of a federation of small republics. Secondly, the population had to remain homogeneous in culture and *mœurs* as well as in level of wealth. Also, the purity of its patriotic passion had to be reinforced through public education, raising "a whole people like a family", making sure that they would "pay a singular attention to each other".⁴⁶ While "things were done in those governments that we no longer see and that astonish our small souls", and while the "natural place of virtue is with liberty", Montesquieu was not so ambiguous as to see the liberty of the ancients as something worth craving for moderns. He clearly had no taste himself for the tight-knitted fabric of a Spartan society where common security was bought with the loss of privacy and individuality. And civic paganism, Machiavelli's solution, was hardly desirable to Montesquieu, the believer in science and rationalism.⁴⁷

But even on their own terms, the ancient republics exhibited serious weaknesses. Virtue was easily corrupted either by taste for luxury, by *exaggerating* the love of equality, or by the advent of militarism as in Rome. And direct democracy

45. Montesquieu, *Spirit of the Laws*, authors foreword, IV,5, V,2-3.

46. Montesquieu, *Spirit of the Laws*, IV,7-8, V,4-6, VIII,16, IX,1-2.

47. Montesquieu, *Spirit of the Laws*, IV,4, VII,39.

was much more likely to produce instability and faulty decisions than representative forms.⁴⁸ Moreover, in a large republic these dangers would increase enormously: "interests become particularised; at first a man feels he can be happy, great, and glorious without his homeland; and soon, that he can be great only on the ruins of his homeland". Montesquieu's prime example of the dangers of modern reliance on ancient ways, exposed and unstable to begin with, was the previous century's Cromwellian terror, that "fine spectacle ... the impotent attempts of the English to establish democracy among themselves ... [where] ... those who took part in public affairs had no virtue":

When that virtue ceases, ambition enters those hearts that can admit it, and avarice enters them all. Desires change their objects: that which one used to love, one loves no longer. One was free under the laws, one wants to be free against them. Each citizen is like a slave who has escaped from his master's house ... The republic is a cast-off husk, and its strength is no more than the power of a few citizens and the license of all⁴⁹

Appeals to the republican ethos were positively dangerous in the mouths of popular despots like Cromwell as well as absolutist kings and their courtiers, who claimed to serve the common good of justice with the selfless virtue of the good prince. Hence, Montesquieu's analysis of the conditions and varieties of republican government may also be seen as a successful injection of scepticism into the contemporary political discourse. And with this, Montesquieu marks a crucial turning point in the republican history of ideas.

Montesquieu was certainly a republican thinker in terms of his diagnosis of the problem. As in Cicero and Machiavelli, liberty was liberty under law. But not just any law would do. Good laws which promoted liberty better - or, perhaps, promoted a better liberty - were like "those large nets in which fish swim, while believing themselves to be free". Despite Montesquieu's deist acceptance of natural law, his discussions of the relation between divine right, political right (i.e., constitutional law), and civil right in each society, all placed him at a long distance from Locke's derivation of natural rights, let alone the latter's state of nature abstractions. Liberty was conceptually anchored in the universal wish to be free from arbitrary power and fear, and to enjoy the personal security which is a precondition of any form of happiness. But it was also strictly a phenomenon of positive law, relative to the circumstances and history of a given people. Finally, this liberty was an artificial creation whose durability in time depended on conditions and legislative ingenuity, which, as Montesquieu put it in connection with the 'moderate' government

48. Montesquieu, *Spirit of the Laws*, II,2, III,3, IV,5, VIII,2,12.

49. Montesquieu, *Spirit of the Laws*, III,3, VIII,16.

he thought he saw in England, was something "rarely produced by chance, and which one hardly dares leave to prudence".⁵⁰

Montesquieu's point of departure remained republican as he asked which institutional and social forms and which popular traits of character were likely, under different conditions, to keep states from slipping into despotism, *given* that monarchy as known in continental European forms was especially prone to do so, and *given* that previous republics, democratic as well as aristocratic (Venice), were fragile, imperfect, and less than hospitable to the full range of modern, private liberties in the first place.

What were these conditions?

First of all, we already noted that Montesquieu stressed a set of considerations about constitutional architecture, the division of powers, and popular checks on institutions. While always important in a republican context, it is the content and detail of such considerations that makes them novel. This concern with institutional design came to constitute the most influential part of Montesquieu's theoretical heritage, taken up, developed, and changed to fit quite different circumstances, in the *Federalist Papers* in particular. However, it was also in the transformation of the myth of the great legislator that the start of the science of political constitutionalism took place. With it some of Montesquieu's original insights were soon to be threatened: insights about the contingent and fragile affair of fitting constitutional measures to the circumstances and customs of a country, and about securing their durability with the right type of citizen mentality.

Hence, secondly, Montesquieu broke new ground in his analysis of the importance, content, and legislative process of civil law. He highlighted not only that law makes for security and liberty and that different laws do so differently. He was also concerned with the complex relationship between legislation and social and cultural mores. Montesquieu's often noted 'relativism'⁵¹ consisted in the notion, pursued throughout *L'Esprit des lois*, that existing mores and customs (themselves in turn partly shaped by the climate, landscape and material conditions of a country) might be more or less conducive to liberty. This constrained the law-maker. Some mores were beneficial in one place but not in another. Some were best left alone, others must be subtly furthered or protected, all suggesting a different 'fit', between countries, and over time. Particularly important was the existence and the type of religious feeling (Christianity being more conducive to moderation), the concern with civic equality (as in Rome and Athens when their mores were still pure), and the development of 'commercial spirit' (as, in different ways, in Marseilles, The Netherlands, and of course England).⁵²

50. Montesquieu, *Pensées*, no. 1787, *Oeuvres complètes* (p.1035).

51. For instance Shklar (1987:91).

52. Montesquieu, *Spirit of the Laws*, XIX-XXIV.

Conversely, the deep-rootedness or sacred character of some customs, whether conducive to liberty or not, made them difficult or dangerous to change, indeed the attempt to do so was likely to be experienced as the "tyranny ... of opinion, which is felt when those who govern establish things that run counter to a nation's way of thinking". None of this, however, constituted a 'communitarian' recognition, let alone advocacy, of institutions and laws that "express" the culture of a people.⁵³ However, it did point in the direction of concerns, stressed in a quite different context by the Anti-Federalists in America, that republican self-government must be understood in terms of the particularity of place: local conditions and sensitivities of liberty that were likely to be ignored in a 'large republic'.⁵⁴

Yet, it is also true for Montesquieu that "customs of a slave people are part of their servitude; [and] those of a free people are part of their liberty". Despite difficulties and dangers, legislation, including constitutional legislation, was important in view of "the character that ... [is] formed from it, and the manners that result from it". Mores and manners are not completely immutable, but they should be changed indirectly, for instance by promoting other mo-res through legislation. This *sociology of liberty* significantly foreshadows the work of Tocqueville.⁵⁵

In Montesquieu, "law deals with men as they exist in history, and at its best it is reason applied to the nature of things".⁵⁶ Legislation becomes an ongoing and contingent affair, a question of human prudence. It bears upon real and experienced liberty as security, but it is also crucially important in the shaping, promoting, and channelling of *mœurs* and manners conducive to liberty. This concern Montesquieu found missing in what he saw in classical writers, quite unfairly in the case of Machiavelli, as exclusive reliance on citizens' virtue at the expense of legislation.

Thirdly, Montesquieu subtly but deliberately started to question the received hierarchy of values regarding the good and virtuous citizen. In doing so he also re-represented, and to a significant degree misrepresented, the place and meaning of civic virtue. In Cicero and Machiavelli, we saw that civic virtue was based on a mixture of rational self-interest in securing the structures of common liberty (stressed by Machiavelli) and moral reason, the call of duty (stressed by Cicero) - helped along by the motivational force of love of country or city, the latter in turn secured by identification based on myth, political ritual, and political participation. In Montesquieu's representation, the last part becomes prominent. Clearly, he recognised that ancient republics enjoyed liberty in the basic 'walls of the city' sense of mutual protection against arbitrary rule and foreign conquest, and resisted the notion (later to be found in Constant) that the 'liberty of the ancients' was an alto-

53. Taylor (1989:165-66).

54. Montesquieu, *Spirit of the Laws*, XIX,3.

55. Montesquieu, *Spirit of the Laws*, XIX,27.

56. Shklar (1987:72).

gether different concept.⁵⁷ However, the virtue needed to secure this mutual protection was described as a selfless and self-denying commitment to the community, a second nature experienced as the point and meaning of a human life. Hence, the Troglodytes of the *Lettres persanes* did not think that "virtue is ... such as to cost us anything, and should not be considered a wearisome exercise",

They described the delights of pastoral life and the happiness of a situation that was always adorned by innocence ... They would give each other presents, and the giver always thought that the advantage was his⁵⁸

And in *l'Esprit des lois* Montesquieu painted a quite different picture of the civic motivations of the ordinary citizen than the one we saw in Machiavelli: In order to secure the survival of the republic, citizens were needed who loved their common liberty, even though "the only advantage of ... [this] liberty was glory". And the force of this love was "passions for the general order", described as "a feeling and not a result of knowledge".⁵⁹

Although the basic concept of liberty was the same, Montesquieu wished to give it a concrete legal content, as well as a socially experienced value for the modern individual, which made the classical republic a very poor second best, and not even a stable bulwark against despotism (Montesquieu's position here is in stark contrast to what we shall see in Rousseau). Indeed, the selfless civic passion and, as stressed in *l'Esprit des lois*, the thirst for glory, were likely to be part of the problem.⁶⁰ As shown by Hirschman, this placed Montesquieu at the beginning of a transformation of political discourse where the advent of commerce and acquisition became associated with a beneficially cooling mentality of calculation and moderation. Against the traditional republican fear of corruption of pure mores through acquisition and wealth, the virtues of self-sacrifice and martial glory became reconceptualised as 'hot' passions that were better replaced by 'interest'.⁶¹

57. Hence, already in the *Lettres Persanes*' tale of the Troglodytes, "wanting to cut oneself off from ... [the common interest] is the same as wanting to ruin oneself", and the perishing of the first (unvirtuous) Troglodytes is described as a result of lack of cooperation for mutual benefit (Montesquieu, *Persian Letters*, XII).

58. Montesquieu, *Persian Letters*, XII. Cp. quotes on page 119.

59. Montesquieu, *Spirit of the Laws*, VIII, 16, V, 2.

60. Manent (1994:379-80).

61. Hirschman (1977:70-81), cp. Deserud (1991). In fact, Montesquieu also called the spirit of commerce a "passion", indeed "heated", and claimed that "reason ... never produces great effects on the spirits of men", and, still echoing classical republican discourse, individual "ardor for enriching ... oneself" is associated with following one's "own caprices and fantasies". Yet, self-interest promotes a (rational-egoistic) zealous concern with one's own liberty, and a generally beneficial propensity to deliberate and reason - whatever the quality of each person reasoning (Montesquieu, *Spirit of the Laws*, XIX, 27).

According to Montesquieu, although commerce and affluence would have been detrimental to the civic virtue of military republics like Sparta,

when democracy is founded on commerce, it may very well happen that individuals have great wealth, yet that the mores are not corrupted. This is because the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquillity, order, and rule. Thus, as long as this spirit continues to exist, the wealth it produces has no bad effect⁶²

Also, commerce would destroy "destructive prejudices", create "gentle mores", in place of barbarous ones, spread "knowledge of the mores of nations", and replace hostility between countries with a love of peace, based on interdependence, a calculative spirit and a "feeling for exact justice".⁶³

Did Montesquieu then completely do away with the republican language of active citizenship? Did he think passion for glory was the only danger, and that quiet commerce, private acquisition, and honouring of contract was the cure? Hirschman's conclusion, while important, is only half the picture. 'Gentle' mores were very much part of the intersubjective sense of security which Montesquieu saw as a part of liberty. However, Montesquieu did in fact recognise the need for vigilant citizens checking political power. Only, he reinvented the motivational argument by pointing to a set of civic dispositions and character traits developing, as he discovered in England, with the spirit of commerce.

The effects on political socialisation arising from commerce and, as in England, coupled with a mixed constitution and representative government, would be several. The concern with private property would bring with it a beneficial independence of spirit and sense of civic equality, detrimental to empty flattering and politeness, greatly diminishing the importance of rank and social hierarchy, and replacing it with respect for "wealth and personal merit".⁶⁴

Also important would be the restless concern with how political decisions had a bearing on one's own interests, a tendency to shift one's loyalties from one competing party to another, with leaders always in danger of losing the favour of any particular group. The power of leaders would be "remade daily" as an uneasy trust, they "would often be obliged to justify their conduct", and even "be people of somewhat greater honesty". The vigilance of citizens would consist in a habitual urge to "talk much about politics". Everybody, "in order to enjoy liberty", would

be able to say what he thinks and because, in order to preserve it, each must still be able to say what he thinks, a citizen in this state would say

62. Montesquieu, *Spirit of the Laws*, V,6.

63. Montesquieu, *Spirit of the Laws*, XX,1-2.

64. Montesquieu, *Spirit of the Laws*; XIX,27.

and write everything that the laws had not expressly prohibited him from saying or writing

The important point was not the quality of what would be said and written, or "whether individuals reason well or badly", but the fact that they did so at all.⁶⁵

People would be constantly worrying about imagined rather than real abuses of executive power. Unlike ancient, direct-democratic forms, such popular anxieties would not lead to political disruption, but be checked by the higher enlightenment of the legislative institutions. However,

empty clamors and insults ... would ... have the good effect of stretching all the springs of the government and making all the citizens attentive. But, if those terrors arose on the occasion of the overthrow of fundamental laws ... [o]ne would soon see an awful calm, during which everything would unite together against the power that violated the laws (...) small interests would cede to greater ones (...) [and] there would be a revolution that would not change the form of the government or its constitutions, as revolutions formed by liberty are but a confirmation of liberty⁶⁶

Despite the differences noted, Montesquieu's analysis of civic equality, popular vigilance, and the beneficial effects on politics of conflict seems to take him a little closer to Machiavelli after all. Indeed, Montesquieu's departure from the republican argument is easily exaggerated. He challenged what he and his time considered to be the classical republican values and understanding of the requirements of civic virtue. His reversal of the traditional view of commerce was certainly radical. Yet the reason why he noted, already in *Lettres persanes*, that a republic had better commercialise itself was that selfless sacrifice was a much less robust form of civic disposition than one based on moderate wealth and self-interest.⁶⁷ After all, the Netherlands, like Athens but unlike Sparta, were commercial republics, and in England Montesquieu described a type of rational patriotism, significantly couched in commercial metaphor, which we, unlike himself, can nevertheless recognise:

This nation would love its liberty prodigiously because this liberty would be true; and it could happen that, in order to defend that liberty, the nation might sacrifice its goods, its ease, and its interests, and might burden itself with harsher imposts than even the most absolute prince would dare make his subjects bear

In order to preserve its liberty, it would borrow from its subjects, and its subjects, who would see that its credit would be lost if it were

65. Montesquieu, *Spirit of the Laws*, XIX,27.

66. Montesquieu, *Spirit of the Laws*, XIX,27.

67. Montesquieu, *Persian Letters*, Appendix,3.

conquered, would have a further motive to make efforts to defend its liberty⁶⁸

However important the blessings of geographic and climatic circumstance England enjoyed to begin with, the beneficial effects of the spirit of commerce found there were meant by Montesquieu to be generalisable - all to be fitted with the right or best possible laws and constitutional architecture in different places. England was the commercial republic, which "hides under the form of a monarchy"⁶⁹ which Montesquieu was seeking all along, because it was much *better* at securing a liberty fit for moderns, one that offered more than the security of the monk or the Spartan citizen warrior, but also because it provided for the development of a type of robust virtue which, while not to be graced by that name, would be no less effective and worth striving for, in fact more so.

This reconceptualised theme of commerce and virtue - and the virtue of commerce - was destined to become yet one more of the discursive battlegrounds of modern republicanism. Tocqueville, in particular, was to take the inherent ambiguities and tensions between commerce, materialism and civic spirit to a higher level of reflection than either Montesquieu or any of those American writers who followed the latter. By contrast, some liberal theorists of the beneficial effects of private vice and unbridled egoism in a purely economically conceived civil society came to take it outside its republican framework. In the next chapter we shall take a closer look at these discussions.

4. Rousseau

Rousseau's work in many ways was a response to Montesquieu and to what Rousseau considered a too hasty dismissal of the classical tradition. In many ways, Rousseau wanted to create politically exactly that world of ancient moral simplicity, equality, and spontaneous benevolence and sacrifice which Montesquieu, after all, considered well lost with the rise of the moderns. Thus, Rousseau's favourite historical exemplars, from Sparta to Crete (but not Athens), and his conjectural blueprints for 'uncorrupted' places like Corsica and Poland, were rhetorical devices employed to *reverse* the hierarchy of values which theorists like Montesquieu, Hume, and many of Rousseau's contemporaries were erecting.⁷⁰ Politeness, refined manners, the division of labour and its facilitation of diversified cultures of consumption and luxury, and above all the social stratification of human value and dignity which was the inevitable outcome of modernity, were abhorred, consciously analysed, and theoretically resisted by Rousseau, who contrasted these phenomena

68. Montesquieu, *Spirit of the Laws*, XIX, 27.

69. Montesquieu, *Spirit of the Laws*, V, 19.

70. I return to this reversal of values in the next chapter.

with "the picture of the simplicity which prevailed in the earliest times" where men "were innocent and virtuous."⁷¹

Charles Taylor has highlighted the way in which Rousseau may be seen as an early theorist of 'the politics of recognition'. According to this perceptive analysis, Rousseau's work was driven by an urge to achieve a more dignified and meaningful sense of selfhood in a world of dissolving hierarchies and changing fortunes. Such self-identity and sense of *worth*, inescapably dialogical and negotiable in character, depended upon the existence of significant others, and *misrecognition* was constantly possible.⁷²

This was indeed a modern malaise.⁷³ Born from the introduction of property, and developing with the growth of commerce, the division of labour, and the urban refinements of the arts and sciences, it was depicted by Rousseau as an intolerable condition of men bowing to the most superficial and ridiculous whims of fashion, of inability to demonstrate or believe in one's own inner worth, of impossibility of real friendship, and of everybody being unfree or independent, or, as we would say, *inauthentic*.

There prevails in modern manners a servile and deceptive conformity; so that one would think every mind had been cast in the same mould (...) We no longer dare seem what we really are, but lie under a perpetual restraint; in the meantime the herd of men, which we call society, all act under the same circumstances exactly alike (...) What a train of vices must attend this uncertainty! Sincere friendship, real esteem, and perfect confidence are banished from among men. Jealousy, suspicion, fear, coldness, reserve, hate, and fraud lie constantly concealed under that uniform and deceitful veil of politeness

The modernity of Rousseau, of course, consisted in his recognition of the ambiguity of "the promptings of our nature". The alleviation of modern inauthenticity was not, after all, a return to 'nature', but a step forward to a decidedly artificial, politically created and maintained collective life, where the experience of manly independence and the feeling of equal worth which Rousseau found in Sparta could be reinstalled, and where men could live in "the sweet society of...fellow-citizens", and again find "their security in the ease with which they could see through one another". Politics, and political culture in a comprehensive, total (some have said totalitarian) sense, was used to recreate a universe of dignified simplicity, with a minimal division of labour, where no one expected or demanded to be recognised as anything *but* a citizen, and for this reason could look everybody else comfortably in

71. Rousseau, *A Discourse on the Arts and Sciences in The Social Contract and Discourses* (p.18).

72. See Taylor (1992b:30-37).

73. Taylor (1991).

the eye. Esteem, recognition, and honour was still important, but a well-ordered republic served to distribute it relatively equally. By being all alike in one's substantial citizenship status, and by confirming the former and enacting the latter through the general will and patriotic service, it was possible to avoid domination by the opinion of others. Thus, to make a long story short, the quest for rural simplicity which was an instrumental devise in the republican tradition, devised to maintain the civic independence of self-governing citizens, assumed a distinctly modern (and *anti-modernist*), proto-romantic, value-in-itself dimension in Rousseau.⁷⁴

Yet, while this is recognised - and some version of the story is to be found in all readings of Rousseau - we should note that this early communitarian *persona* was not alone in Rousseau's *oeuvre*. Indeed, it can be read as closely connected to a more republican Rousseau. Thus, Maurizio Viroli has suggested that we read Rousseau's work as an attempt to combine a contract theoretical, rationalist language, drawn from a contemporary discourse of rising moral individualism, with a republican language of virtue and of the problems of generating such virtue. One language was employed to show how a political order could be just, legitimised for moral individuals. This was the language of the general will. It is a mistake to see this theme as a foreshadowing of 'direct democracy' or the like. Rather, it was a justificatory device, in part a thought experiment that appealed to enlightened, universalised self-interest. Another language was employed when addressing the problem of *preservation* of the republic. This was a "language, based on the notions of common identity and belonging".⁷⁵ Identity and belonging, part of a well-ordered life for modern individuals, were also some of the means which were needed to maintain a well-ordered republic.⁷⁶

The republican argument linking liberty, law, and virtue has been overlooked in most readings, famously by Constant and Berlin,⁷⁷ which ascribe to Rousseau a 'positive' concept of freedom - meaning a share in public power and moral self-legislation. The crucial point which is missed, here, is Rousseau's distinction between moral and civic or political liberty.⁷⁸ Again, as in Montesquieu and Machiavelli, the latter is not mere collective political self-government. Nor is it Hobbesian absence of constraint or the silence of law. The latter would be what Rousseau with Montesquieu calls *independence*, and what the tradition termed *license*. Such independence was enjoyed by individuals in Rousseau's natural state before the social

74. Rousseau, *Discourse on the Arts and Sciences* and *A Discourse on the Origin of Inequality*, in *The Social Contract and Discourses* (pp.6,32); Taylor (1992b:44-51).

75. Viroli (1988:13).

76. The title of Viroli's book is *Jean-Jacques Rousseau and the Well-Ordered Society*.

77. Constant, *Liberty of the Ancients* (p.318); Berlin (1969b:162-63).

78. On the nature of Rousseau's concept of liberty see also Viroli (1988: 148-87), to

compact. In this state of self-sufficient and harmonic pastoral anarchy, before the introduction of property and inequality, independence did not entail the slavery of some under the lordship of others:⁷⁹

One should never confuse independence and freedom. These two things are so different that they are actually mutually exclusive. When everyone does what he likes that often means doing something which annoys others and they cannot fairly be described as being free. Liberty is not so much a question of doing what you want as not being forced to do what others want; even less so does it involve making others subservient to ourselves⁸⁰

Rousseau, firstly, conceived of liberty in terms of a *free people*.⁸¹ As in Machiavelli, Cicero, and Aristotle, a free people is one that is sovereign and self-governing, and not subjected to the will of a single ruler or ruling group, nor to that of a foreign invader. As in Machiavelli, we find in Rousseau the empirical argument that also individual liberty (including its sense of freedom from constraint) is only secure under conditions of self-government. Only with popular sovereignty is it possible to prevent that rulers put themselves above the common interest; only a vigilant citizenry may keep potential tyrants and invaders at bay.⁸²

Secondly, in Rousseau, as in Cicero, Machiavelli, and Montesquieu, liberty is conceptually linked to law. Liberty is first and foremost a condition of not being subject to the will and whims of others, and the defining opposite of liberty is servitude. As such, it is made possible and indeed constituted by the unarbitrariness of law and by the condition of equality under the law for all citizens, high and low, weak and strong. Although political liberty cannot then be defined as "doing what you want", this does not imply, *pace* Berlin's positive liberty, something like 'doing what is right'. It means simply observing the necessary and reasonable constraints

whose discussion I am indebted.

79. For the complexities of the status of the state of nature in Rousseau, see MacAdam (1989).

80. Rousseau, *Lettres écrites de la montagne*, in *Oeuvres complètes*, vol. 3, p.841, ed. B. Gagnebin and M. Raymond, Paris: Bibliothèque de la Pléiade, 1959-69, cited from Viroli in his own translations (1988:150-51).

81. "[A] free people obeys, but it does not serve, it has leaders but no masters; it obeys the laws, but it obeys only the laws, and it is due to the strength of the laws that it does not find it necessary to obey men" (*Lettres écrites de la montagne*, in *Oeuvres Complètes*, p.842, cited in Viroli 1988:152).

82. Rousseau continually warns the Polish people that the liberty they long for comes at the price of vigilance. After the long war against Russia, "exhausted by your country's trials, you sigh for peace [*tranquillité*]. Peace seems to me easy to come by, what is difficult, to my way of thinking, is to keep it, and liberty along with it ... [The patriots] would like to combine the sweets of freedom with the peace and quit that accompany despotism. They wish, I believe, for two things that can-

on one's conduct, so as not to trespass on others. This is simultaneously the precondition for a similar restraint on behalf of these others. Hence, a person who is free in Rousseau's sense, is someone who is allowed to do, and who knows that no one, unpunished, will attempt to prevent him from doing, all the things that the law permits:⁸³

We must remember two provisos. Although legality as such - even tyrannical laws - might provide some safety and predictability, Rousseau presupposed that the law applied equally to all and that no one put himself above the law. Hence the infamous formulations about the complete submission of the individual with his rights to the will of the community. Secondly, the law was presupposed to mirror the common good of all:

The sovereign power, albeit entirely absolute, entirely sacred, and entirely inviolable, does not and cannot exceed the limits of the general conventions, and ... every man can fully dispose of the part of his goods and freedom that has been left to him by these conventions. So that the sovereign never has the right to burden one private individual more than another, because then the matter becomes individual, and its power is no longer competent⁸⁴

Concretely, the type of liberty Rousseau had in mind, again completely in the tradition from Machiavelli, first of all consisted of the obvious goods of security of person and property. This liberty, says Rousseau, "is actually preferable to what it was beforehand":

What man loses by the social contract is his natural liberty and unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses ... we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will; and possession, which is merely the effect of force or the right of the first occupier, from property, which can be founded only on a positive title

Men, as they become citizens, exchange "to their advantage an uncertain, precarious mode of existence for another that is better and safer ... their force ... for a right that the social union renders invincible".⁸⁵

not keep house together" (Rousseau, *The Government of Poland*, p.3).

83. Rousseau follows quite closely Montesquieu's "Liberty is the right to do everything which the laws allow: and if a citizen were allowed to do what is forbidden, there would be no more liberty because the others would also have this same right" (Montesquieu, *Spirit of the Laws*, XI,3).

84. Rousseau, *The Geneva Manuscript*, I,6.

85. Rousseau, *Geneva Manuscript*, I,6; *The Social Contract*, I,8.

Thirdly, however, also the very formulation of the common good, or the content of civil liberty, became a problem of potential dominance. Before Rousseau, who employed the rationalist language of Enlightenment individualism, this was not an issue. The law was the limit of the city, from wherever its sovereignty derived. Rousseau parted company with the earlier republican tradition in his stipulation that a person was only *completely* free in a situation where the law not only prevented others from placing himself in servitude, but where *the law itself* did not constitute subjection. It would do so, according to Rousseau's hyper-individualist argument, unless everybody, *unanimously*, took part in formulating the law. This was why he considered the inhabitants of the British Isles to be mere slaves who alienated their power through representation and long parliaments. Here, civil liberty shaded into moral liberty:

We might, over and above this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.⁸⁶

This liberty was obtained only when individuals were able, in a manner foreshadowing Kant, to ask and answer the right question, as described in the architecture of the general will. In principle, all could become free in this regard, because of Rousseau's optimistic Enlightenment assumption that the structure of the right was somehow clear to all. Moral liberty could be obtained by the person who was willing, not so much to deliberate with himself or indeed with others, but rather to see and listen with his heart to the obvious and transparent needs of all.

This ability to have an open heart was of course linked to Rousseau's ideal of a simple, well-ordered life. Moral liberty was not so much a question of autonomy in any strong sense of self-legislation, let alone collective self-government, an ideal that is often mistakenly associated with Rousseau.⁸⁷ Rather, it was linked to a communitarian and rural vocabulary of restraint and moderation. While Rousseau's conception of liberty and social contract foreshadows Kant and later Kantian liberals, his ideas of individualism, civil and moral, put him in a different, rather less liberal league. The civil rights enjoyed by the happy but simple peasant free-man could not have appealed to sophisticated Parisian *philosophes*. We noted how, to Rousseau, Genevan born citizen and always prone to idyllise this background, the Spartan austerity of such a life was a condition for moral dignity in a depraved modern world, although he knew that others did not see it this way. Civil liberty was a necessary, but by no means a sufficient condition for moral liberty. But the latter, in turn, was also a precondition for the former. In line with Spartan antiq-

86. Rousseau, *The Social Contract*, I,8.

87. A recent sophisticated formulation of this ideal is Gould (1988).

uity, Rousseau held an approximation towards moral liberty and its battery of self-restraints as necessary for the republic.⁸⁸

A precondition, indeed a constitutive part of this civil liberty, was the willing exercise of a civic virtue and willingness to sacrifice which could be expected to come forth because this was a *rational* mode of conduct:

Their life itself, which they have dedicated to the State, is constantly protected by it; and when they risk or lose it for the State's defense, what are they then doing that they did not do more often and with greater danger in the state of nature when, waging inevitable fights, they defend at the risk of life that which preserves it for them? It is true that everyone has to fight, if need be, for the homeland, but also no one ever has to fight for himself. Don't we still gain by risking, for something that gives us security, a part of what we would have to risk for ourselves as soon as our security is taken away?⁸⁹

The *civic virtue* required by Rousseau may be summarised. First, there was the Machiavellian need for vigilance, keeping an eye on the rulers, and exhibiting courage in the defence of the country against internal and external enemies. The choice of magistrates must be made carefully and prudently. But secondly, civic virtue was an everyday thing. The ability of each citizen to will and subscribe to the laws was not only the condition of moral liberty. Just as importantly, it was the condition for a good citizenry, and hence the working of these laws. Whatever the quality of the law, what

is impossible is to make laws that the passions of men will not corrupt ... and to foresee and evaluate all the forms this corruption will take is, perhaps, beyond the powers of even the most consummate statesman⁹⁰

Citizens must show moderation, respect the rights of others, and help see to it that such rights actually translate into just treatment, also of the weak. To do so they must constantly confirm in their respective hearts the content of the laws.⁹¹ Such

88. As did Montesquieu. The difference between him and Rousseau was the latter's happy willingness to accept these conditions.

89. Rousseau, *Geneva Manuscript*, I,6.

90. Rousseau, *Government of Poland* (p.3).

91. From the point of view of the legislator and statesman, while "it is good to know how to deal with men as they are, it is much better to make them what there is need that they be. The most absolute authority is that which penetrates into a man's inmost being, and concerns itself no less with his will than with his actions (...) they would feel that the greatest support of public authority lies in the hearts of the citizens, and that nothing can take the place of morality in the maintenance of government. It is not only upright men who know how to administer the laws; but at bottom only good men know how to obey them" (Rousseau, *A Discourse on Political Economy in The Social Contract and Discourses*, p.129).

confirmation, in turn, would be helped by a number of austere life-style requirements. To this effect, Rousseau would suggest what now, as in his own time, seems draconian measures. Moreover, he would laud the moral premium obtained from them on independent grounds.

Again, the motivational argument looks much like that of Machiavelli. Rousseau took as his point of departure, 'men as they are'. Even when suitably socialised they would still have a natural and legitimate self-interest, which should indeed be the basis of civic motivation. He held out the promise, not only of the moral autonomy of participating in the general will, but also of a peaceful and orderly life in the security of law. And he was quite aware that the austerity of the former life, in order to persuade, at the very least needed to be sweetened by the comforts of the latter.⁹² Thus, a first condition for making citizens was that individuals did indeed enjoy these comforts, the security of rights in person and property.

In *A Discourse on Political Economy* Rousseau highlighted the importance of civil liberty in a social context that may usefully be contrasted to that of Montesquieu. While the latter was appealing to the independent man of letters or commerce, wishing to defend his liberty against a monarch of despotic bend, Rousseau's audience was quite different. He asked rhetorically:

does not the undertaking entered into by the whole body of the nation bind it to provide for the security of the least of its members with as much care as for that of all the rest? Is the welfare of a single citizen any less the common cause than that of the whole state? It may be said that it is good that one should perish for all. I am ready to admire such a saying when it comes from the lips of a virtuous and worthy patriot voluntarily and dutifully sacrificing himself for the good of his country: but if we are to understand by it, that it is lawful for the government to sacrifice an innocent man for the good of the multitude, I look upon it as one of the most execrable rules tyranny ever invented⁹³

92. A measure of pessimism may be noted in Rousseau as regards his belief in the willingness of moderns to pay the price of liberty:

Liberty is a food that is good to taste but hard to digest. It sets well only on a good strong stomach. I laugh at those debased peoples that let themselves be stirred up by agitators and dare to speak of liberty without so much as having an idea of it ... Proud, sacred liberty! If they but knew her, those wretched men; if they but understood the price at which she is won and held; if they but realised that her laws are stern as the tyrant's yoke is never hard, their sickly souls, the slaves of passions that would have to be hauled out by the roots, would fear liberty a hundred times as much as they fear servitude (Rousseau, *Government of Poland*, p.30).

93. Rousseau, *Discourse on Political Economy* (p.132).

To Rousseau, the glory of Rome was "the regard [the] government paid to the individual". Leaders were advised to "[s]how respect ... to your fellow-citizens, and you will render yourselves worthy of respect", and to take care not to abuse the law or the spirit of the law. "What is most necessary, and perhaps most difficult, in government, is rigid integrity in doing strict justice to all, and above all in protecting the poor against the tyranny of the rich".⁹⁴ Also, states should take care to avoid the dangers and miseries of conquest as well as arbitrary or inequitable taxation of property. Most generally, it was,

one of the most important functions of government to prevent extreme inequality of fortunes; not by taking away wealth from its possessor, but by depriving all men of the means to accumulate it; not by building hospitals for the poor, but by securing the citizens from becoming poor⁹⁵

Not only was inequality a source of corruptions, such as the taste for luxury, jealousy, and indifference towards the common good. It was also a main reason that the letter of law did not always translate to reality, as when the rich and powerful would much easier obtain justice when they needed it, or get away with exemptions when they needed that, while the case was the opposite for the poor.⁹⁶

Yet, these matters, important as they were, "will be inadequate, unless rulers go still more to the root of the matter".⁹⁷ As in Machiavelli, this core of common sensical appeal to enlightened collective interest was not expected to carry the day unaided. Citizens were short-sighted, susceptible to petty pleasures and corruption. Lawgivers could not count on the allegiance of citizens if the latter did not enjoy their liberty, but liberty would not come about or be defended in the first place, unless the strings of political belonging and identity were played.⁹⁸ The medium for this was patriotism:

94. Rousseau, *Discourse on Political Economy* (pp.133-34).

95. Rousseau, *Discourse on Political Economy* (p.134).

96. Are not all the advantages of society for the rich and powerful? ... Is not the public authority always on their side? If a man of eminence robs his creditors, or is guilty of other knaveries, is he not always assured of impunity? Are not the assaults, acts of violence, assassinations, and even murders committed by the great, matters that are hushed up in a few months, and of which nothing more is thought? But if a great man himself is robbed or insulted, the whole police force is immediately in motion, and woe even to the innocent persons who chance to be suspected (...) How different is the case for the poor man! The more humanity owes him, the more society denies him. Every door is shut against him, even when he has a right to its being opened: and if ever he obtains justice, it is with much greater difficulty than others obtain favours (Rousseau, *Discourse on Political Economy*, p.147).

97. Rousseau, *Discourse on Political Economy* (p.147)

98. There can be no patriotism without liberty, no liberty without virtue, no virtue without citizens; create citizens, and you have everything you

the feeling of humanity evaporates and grows feeble in embracing all mankind, and ... we cannot be affected by the calamities of tartary or Japan, in the same manner as we are by those of European nations. It is necessary in some degree to confine and limit our interest and compassion in order to make it active. Now, as this sentiment can be useful only to those with whom we have to live, it is proper that our humanity should confine itself to our fellow-citizens, and should receive a new force because we are in the habit of seeing them, and by reason of the common interest which unites them. It is certain that the greatest miracles of virtue have been produced by patriotism: this fine and lively feeling, which gives to the force of self-love all the beauty of virtue⁹⁹

Although Socrates was more virtuous than Cato, Rousseau remarks that the former succeeded only in persuading a few and in dying for truth, while the latter "defended his country, its liberty, and its laws". Citizens should be "taught by the one, and led by the other ... for no people has ever been made into a nation of philosophers, but it is not impossible to make a people happy".¹⁰⁰

Rousseau's patriotism could be generated by a number of means and policies. One was the formation of a citizen's army, as we saw in Machiavelli.¹⁰¹ Still, patriotism was only a happy by-product here, and Rousseau did not have, like Machiavelli, an argument in favour of militarism for the sake of virtue. Apart from *The Social Contract*, Rousseau developed his themes in much detail in *The Government of Poland*. Approvingly, he started by noting that,

All these legislators of ancient times [Moses, Lycurgus, and Numa] based their legislation on the same ideas. All three sought ties that would bind the citizens to the fatherland and to one another. All three found what they were looking for in distinctive usages, in religious ceremonies that invariably were in essence exclusive and national, in games that brought the citizens together frequently, in exercises that caused them to grow in vigour and strength and developed their pride and self esteem; and in public spectacles that, by keeping them reminded of their forefathers'

need; without them, you will have nothing but debased slaves, from the rulers of the state downwards (Rousseau, *Discourse on Political Economy*, p.135).

99. Rousseau, *Discourse on Political Economy* (p.130).

100. Rousseau, *Discourse on Political Economy* (p.131).

101. [T]he state's true defenders are its individual citizens, no one of whom should be a professional soldier ... That is how they handled the military problem in Rome; that is how they handle it now in Switzerland; and that is how it should be handled in every free state (...) because people always fight better in defence of their own than in defence of what belongs to others (Rousseau, *Government of Poland*, p.81).

deeds and hardships and virtues and triumphs, stirred their hearts, set them on fire with the spirit of emulation, and tied them tightly to the fatherland¹⁰²

Rousseau started with the upbringing of infants and education of children.

The newly-born infant, upon first opening his eyes, must gaze upon the fatherland, and until his dying day should behold of nothing else. Your true republican is a man who imbibed love of the fatherland, which is to say love of the laws and of liberty, with his mother's milk. That love makes up his entire existence¹⁰³

Public games, exercises, and free-air spectacles gave inhabitants of the country experiences of communality, both in the sense of partaking in a collective enterprise and in the sense of being exposed to the eyes of their fellow citizens and the possibility of public disapprobation. The great events of the nation's history and the sacrifices of patriots should be solemnly commemorated with frequent intervals.

All should have a peculiar *national* flavour, drawing upon, for instance, Polish traditions, or inventing new ones. National costumes, national history taught in the schools, a distaste for travelling, a specific national paraphernalia of civil religion were all part of the picture. Indeed, in *The Government of Poland*, patriotism became an "invariably exclusive and national" affair. It was also characterised by Spartan severity. Luxury, idleness, gambling, unnecessary adornment, feminine traits, and excessive privatism must be discouraged or banned.¹⁰⁴

In *The Social Contract*, some scope was left for private (religious) opinion. Civic religion here, in fact in contrast to Christian religions, in particular Catholicism, was seen as capable of accommodating different groups. Although Judaism as well as Christianity claimed to be universal, this was exactly the problem, because they could not tolerate other religions. Historically, according to Rousseau, pagan religions were peculiar to different countries, yet tended to be respectful of the other gods being likewise to other countries. They were beneficial by linking "the divine cult with love of the laws, and, making country the object of the citizen's adoration, teach[ing] them that service done to the state is service done to its tutelary god".¹⁰⁵ Still, Rousseau conceded,

it is bad in that, being founded on lies and error, it deceives men, makes them credulous and superstitious, and drowns the true cult of the divinity in empty ceremonial. It is bad again, when it becomes tyrannous

102. Rousseau, *Government of Poland* (p.8).

103. Rousseau, *Government of Poland* (p.19); cp. Rousseau, *Discourse on the Arts and Sciences* (pp.20-21).

104. Rousseau, *Government of Poland* (pp.10-24).

105. Rousseau, *The Social Contract*, III,8.

and exclusive, and makes a people bloodthirsty and intolerant, so that it breathes fire and slaughter¹⁰⁶

Yet, Rousseau agreed with Machiavelli that Christian religion, even the 'true one' of the Gospels, while making people virtuous, also made them unworldly. Rousseau's suggestion was,

a purely civil profession of faith of which the Sovereign should fix the articles, not exactly as religious dogmas, but as the social sentiments without which a man cannot be a good citizen or a faithful subject (...) The dogmas of civil religion ought to be few, simple, and exactly worded, without explanation or commentary. The existence of a mighty, intelligent, and beneficent Divinity, possessed of foresight and providence, the life to come, the happiness of the just, the punishment of the wicked, the sanctity of the social contract and the laws: these are its positive dogmas. Its negative dogmas I confine to one, intolerance¹⁰⁷

Rousseau optimistically thought that we could have it both ways: while appeals were made to religious feeling and passion, their object was still reasonable. And while civil religion was linked to patriotic love of country, it did not necessarily involve intolerance. All this evaporated in the older Rousseau's draconian prescriptions for Poland, where the initial project of liberty itself seemed to be jeopardised. Here, identification with the community came at the enormous price that each individual became very little else than a citizen, and a fiercely nationalistic one at that.¹⁰⁸

Leaving aside the radical nature of Rousseau's measures, particularly in *Poland*, we should remember the core of his intuition: that citizens, in order to show civic virtue, must identify with a concrete political community, and with a bounded group of people which, in some respect, they 'see', and cooperate with. But for this identity to ensue, liberty must already be secured, and the measures of identification must, in turn, appeal to the value of this liberty:

Let our country then show itself the common mother of her citizens; let the advantages they enjoy in their country endear it to them; let the government leave them enough share in the public administration to make them feel that they are at home; and let the laws be in their eyes only the guarantees of the common liberty¹⁰⁹

These elements, the reliance on a strong state that embodies and enacts the common good of a universal and homogeneous citizenry, and the willingness to de-

106. Rousseau, *The Social Contract*, III,8.

107. Rousseau, *The Social Contract*, III,8.

108. Taylor (1992b:44-51).

109. Rousseau, *Discourse on Political Economy* (pp.133-34).

mand total identification with this state from the citizens, were to inform French political Jacobinism, and with it the dark side of the modern republican heritage. Rousseau's ideas about civic identification were particularly ambiguous. He did not advocate a return to, or a revival of, genuine national traditions and feelings, but, on the contrary, the instrumentalisation of the artifice of symbols. Thus, while foreshadowing contemporary theorists of nationalism and national identity as well as the agents of cultural assimilation, he also, on the other hand, promises us that collective identity is not necessarily a closed and determinate affair.

Say what you like, there is no such thing nowadays as Frenchmen, Germans, Spaniards, or even Englishmen - only Europeans. All have the same tastes, the same passions, the same customs, and for good reason: not one of them has ever been formed nationally¹¹⁰

110. Rousseau, *Government of Poland* (p.11).

CHAPTER 4: REPUBLICANISM IN THE DISCOURSE OF BRITISH ENLIGHTENMENT

1. Introduction

In the chapter following this, we shall trace republicanism as it crossed the Atlantic from Britain to the New World, and was accommodated in the process to the radically different reality of a new, large, and unprecedentedly *democratic* nation. However, the history of this geographical and theoretical transition is intimately linked to the history of Enlightenment political thought, including strands of theory that developed into what we now call liberalism. Thus, it is also linked to conceptual and theoretical encounters in which distinct aspects of the republican view of politics were challenged and reformulated. These encounters facilitate our appreciation of the historical boundaries of the republican argument, just as they help us understand the nature and causes of its eventual eclipse. To trace these developments, we need to look at a number of figures of the British Enlightenment, in particular John Locke and the demonstrably anti-republican David Hume. We also deal with the illuminating injection of republican themes into Enlightenment thought on commerce, progress, and civil society in the other Scottish authors Adam Smith and Adam Ferguson, who both, like Hume, took up themes that we have encountered in Montesquieu.

As we shall see in the next chapter, it is difficult to claim that American thought was not 'liberal', if we connect this term with a set of its conventionally associated ideas and concepts such as natural rights, state of nature, toleration, or commercialism. However, to speak of 'liberalism' in the eighteenth century may mislead us. In particular, with the exception of Hobbes, whose provocatively modern works had little impact, much early liberalism was closely tied to a universe of religious devotion, Christian duty, and social obligation - as distinct from the more radical doctrines of moral, social, and economic individualism, which appeared at a much later date. This was certainly the case with Locke. Hume, whose work stands at the beginning of another great tradition of liberal rejection of republican assumptions, was *protoliberal* in a different, more sceptical, anti-democratic, and conservative sense.

Liberalism, I would be inclined to argue, is best regarded as an artefact of the next century. Of course, exactly what liberalism consists of can be endlessly debated, as can the historical date of birth of any one of its constitutive ideas. Such a debate does not *per se* concern us here, and it is therefore better to speak, for the time being, of a number of distinct conceptual frames and fields of debate that rose to prominence with the European Enlightenment. All of these (along with others which I do not discuss) eventually assumed various forms which we now call 'lib-

of whatever conventionally agreed liberal credentials. Some have already been hinted at in the writings of Montesquieu and the early English republicans. I propose to cut through many layers of ideological complexity in order to concentrate on these new forms of argument as conceptual 'bottles' into which either old or new wine could be poured. All of them constituted challenges of a new age to the standard assumptions of republican discourse as it had been carried out in the past. As such, their content is obviously important to us. But they also became conceptual frameworks inside which republicanism could be modernised or modified, at least for a time, in manners suitable for an emerging world of commerce, democracy, and individualism.

The debates concerned the nature of natural rights and political authority; the taming of interest and faction by the means of institutional measures; the gradual invention of a conception of civil society primarily based on the benign effects of commerce; the idea of progress in societies and individuals; and the rise of a new moral psychology based on natural 'sympathy'. Each debate became part of the American ideological landscape and in doing so had primarily British origins. As I introduce and discuss these five protoliberal themes of the British Enlightenment, my aim is to anticipate or to set the scene for later discussion of the manner and degree to which they were reflected in the American constitutional debate.

2. Natural Law, Political Authority, and Natural Rights

Locke's conceptualisation of natural rights and related doctrines of state of nature, trust, and consent have been seen to epitomise the liberal departure from republicanism. According to this view, and granting the soundness of the observation that as "to political 'first principles,' a great many Americans, including the constitutional founders, relied on Lockean notions of natural right," the case for republicanism in America does seem slim.¹ Yet, such a conclusion is too hasty:

First of all, Locke's 'liberalism' was not as inherently hostile to republican ideology as commonly assumed. This is not the place for a comprehensive exposition of Locke's thought.² However, it is clear that Locke's Whig advocacy of the Glorious Revolution was not much influenced by republican virtue doctrine. His virtues were Christian and private rather than martial or civic, and he was little concerned with patriotism.³ On the other hand, Locke's doctrine of self-ownership no doubt con-

1. Sinopoli (1992:70).

2. See Tully (1993); Dunn (1969; 1990b); Laslett (1963); Berlin (1964).

3. For Locke's thoughts on the traditional Christian virtues, on the virtue of justice (keeping compacts and civil laws), civility ("outward expression of goodwill and esteem or at least no contempt or hatred"), and on the conventional element in determining what is regarded as virtue or vice, see essays on 'Obligation of Penal Laws', 'Morality', 'Virtue B', and 'Of Ethics in General' (Locke, *Political Essays*, pp.235-37,268-69,287-88,297). Locke's virtuous citizen was very much the man who devoted himself to "honest and usefull industry" or "honest labour" and

tained the seeds of strong modern subjective rights theories, both as regards the right to freedom of consciousness and the right to the unlimited fruits of one's labour. But to associate such theories with Locke himself or with the discourse of natural rights at the time in general would be unhistorical, as would the implied notion of an inherent *conflict* between private life and rights and, on the other hand, virtue, duty, and the common good of the commonwealth, be it spiritual or material:⁴

Locke's toleration, and the claim that "[n]obody ..., neither single persons, nor churches ... nor even commonwealths, have any just title to invade the civil rights and worldly goods of each other, upon pretence of religion", was the result of a life's thought on the relation between religious faith and civil magistracy.⁵ Although providing important conceptual tools, it entailed no unlimited freedom of conscience in a modern sense of a right to pursue any 'conception of the good', whatever it be. It is often forgotten that Locke's toleration was not extended to unbelievers.⁶

Locke's conception of natural rights was primarily religious and God-centred; indeed "[t]he duty of mankind, as God's Creatures, to obey their divine creator was the central axiom of John Locke's thought".⁷ In the absence of a reliable, comprehensive body of scholastic doctrine, natural rights were still matters of natural law. They were the instruments needed by men, endowed unlike animals with reason and the capacity for moral agency, to comprehend the will of God, understand its obligatory nature, and follow it to the best of their ability, accepting no civil or ecclesiastical authority.⁸

avoided becoming "a useless member of the commonwealth" ('Labour', in Locke, *Political Essays*, pp.327-28). A manuscript on 'Amor Patriae' ends with the speculation that the Christian man, contemplating his eventual departure from the world, "will be much more indifferent to the particular place of his nativity". Finally, even given the right to resistance which should not be taken lightly, Locke's call for civic virtue and patriotism, when it appears, is a call for temperance, union, and allegiance to the rightful king ('On Allegiance and the Revolution'). As already noted, the difference to Sidney, whose "book on government ... I never read" ('Some Thoughts Concerning Reading and Study for a Gentleman'), is clear (Locke, *Political Essays*, pp.275,306-313,352).

4. Haakonsen (1991).

5. Locke, *A Letter Concerning Toleration* (p.31).

6. Locke, *A Letter Concerning Toleration* (p.64).

7. Dunn (1983:119).

8. God having given man above other creatures ... a knowledge of himself which the beasts have not ... he cannot but conclude that he has that knowledge and those faculties ... for some use and some end (...) moral actions are only those that depend upon the choice of an understanding and free agent" ('Law of Nature' and 'of Ethics in General', Locke, *Political Essays*, pp.270,300).

On Locke's conception of natural law, see the 'Essays on the Law of Nature' (Locke, *Political Essays*, pp.79-133).

The purpose of government was the effective institution of a condition of peace where such rights could best be secured, and the exercise facilitated of their corresponding duties to oneself, to God, and to fellow Christians. Civil peace, of course, was also a good in itself, as men "besides their souls, which are immortal ... have also their temporal lives here on earth" with its possible "comforts and happiness". however "frail and fleeting". Neither temporal nor eternal happiness could be secured but by the industry and effort of individuals themselves, but it could be facilitated by "entering into societies, grounded upon their mutual compacts of assistance".⁹

The fruits of such compacts, i.e., "procuring, preserving, and advancing of civil interests", namely "life, liberty, health, and indulgence of body; and the possession of outward things, such as money, lands, houses, furniture, and the like",¹⁰ along with Locke's famous labour theory of property and doctrine of tacit consent to the existence of money¹¹ have been seen as evidence of Locke's 'possessive individualism'.¹² Yet, the consensus in Lockean scholarship has always been adverse to MacPherson's Marxist thesis. Avoiding such reductionism, it is however true that Locke was centrally concerned with political economy and trade. Money and property rights, along with deliberate national policies stimulating demographic growth, trade, and the prevention of idleness among the poor were part of a project of national economic recovery and state-building. But Locke's property rights were not 'libertarian', he had no real problems with taxation, and he was "a patron of minimal government only in certain, if crucial, ways", i.e., the area of religion.¹³

Generally speaking, and certainly when it comes to the debate over 'liberalism' versus 'republicanism', we have been prone to read far too much quasi-Hobbesian 'atomism' into late seventeenth and eighteenth century natural rights theory. For Locke, the language of state of nature was not a means to present, let alone to advocate, the radical self-sufficiency of the individual. It was a way to conceptualise the divine purpose of men as God's workmanship and the absolute moral obligations that followed from this state of affairs in *any* society. It was a way to establish a basic egalitarian case against all pretensions of civil or ecclesiastical magistracies to possess any form of divine authorisation. Above all, it was an attempt to secure - Locke was not always quite sure if he succeeded - the absolute and rational foundation of morals as accessible, in principle, to all men who were given to behold God's light within them.

Finally, liberty, to Locke, was a species of *libertas* in our narrow sense. Civil liberty, unlike Hobbes' 'silence of the law', and over and above the law of nature with

9. Locke, *A Letter Concerning Toleration* (pp.57-58).

10. Locke, *A Letter Concerning Toleration* (p.18).

11. Locke, *Second Treatise*, V,25-51.

12. MacPherson (1962).

13. Goldie (1997:xxvii).

which it must not conflict, was constituted by positive law and civil government, and based for its exact content, legitimacy, and command of voluntary obedience, on the consent of citizens.¹⁴ As anticipated in our discussion of Sidney, the language of consent and Locke's idea of an "executive power of the law of Nature"¹⁵ was not necessarily at odds with republicanism, although Locke's own particular employment of that language certainly was. In view of its later radical interpretation, it is worth noting that Locke wished the doctrine of consent to legitimise the restoration of a rather conservative mixed constitution with king, nobles, and a representative body, and the return to the liberties of the celebrated 'Ancient Constitution'.¹⁶ Once in place, and providing the king was a reasonably just one, there was little use for either Sidney's civic virtue or the occasional modification of the constitution.¹⁷

When the discourse of natural rights, consent, and state of nature became employed in America, its political context was different and much more radical, and its details were not always strictly Lockean. Before pursuing this point in the following chapter, it is well worth remembering that Locke and the natural law tradition generally was only one of two main conceptions of individual rights and duties at the time, the other being the sociological and historical jurisprudence that grew out of the Scottish Enlightenment with Hume and Smith as its main figures.

Neither Hume nor Smith believed that the moral architecture of human societies depended for its existence or binding force on the sanction of a deity, the existence of which at least Hume did not believe in. Against Locke's doctrine of rationally accessible, fixed natural rights and obligations, Hume pointed out the manifest empirical diversity of such conceptions among all those individuals who had not read the *Second Treatise*, yet were capable of reason. The state of nature was "to be regarded as a fiction, not unlike that of the *golden age*", as was the idea that political obligations and rights of resistance might derive their authority from an original

14. Locke's definition, significantly, comes in the section 'Of Slavery':

The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law, but what that legislative shall enact according to the trust put in it. Freedom, then, is not what Sir Robert Filmer tells us: 'A liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws'; but freedom of men under government is to have a standing rule to live by, common to every one of that society (...) not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man (Locke, *Second Treatise*, V,22).

15. Locke, *Second Treatise*, II,13.

16. Locke's views, undeveloped in the *Second Treatise*, may be sampled from 'The Fundamental Constitutions of Carolina' which he co-authored or at least strongly recommended (Locke, *Political Essays*, pp.160-81).

17. For somewhat more radical readings of Locke, see Wolin (1992) and Dienstag (1996a;1996b).

(tacit) promise. To presume such consent to have taken place was as absurd as the notion of a realistic possibility of an actual choice for the average man in the first place. Moreover, "why are we bound to keep our word?", Hume provocatively asked.¹⁸

Hume's bottom line was that, along with other virtues, "justice takes its rise from human conventions". Such artificial virtues or duties, unlike the natural duties which arise by "instinct or immediate propensity" are based on rational insight, helped along by processes of indoctrination in society, into the "necessities of human society, and the impossibility of supporting it, if these duties were neglected". By this, Hume had in mind scarcity and limited sympathy, the perception of a common interest in legal security of property and contract and stability of political authority, recognition of the sources of the latter including the possession of property, and habitual political obedience. Yet, the exact content of property rights and political authority was an empirical and historical matter, although with opinion inclining towards old and settled legal forms.¹⁹

Smith's related view emphasised the manner in which basic prudential dispositions towards the acceptance of authority would take on different historical forms as psychological propensities to modesty and restraint would be balanced in indeterminate ways by a more rational quest for individual utility, the latter sensitive to changing distributions of social power.²⁰

Between them, Smith and Hume introduced a potentially far-reaching, conventionalist, and distinctly modern trait in liberal political thought. Within the bounds of certain constants of human psychology and conditions of collective existence, both accepted the basic historical contingency of moral and legal forms. Hume was aware that public opinion might change, and that disputes over the relations of property and authority were particularly dangerous in this regard, and he certainly thought it as his duty to be among those who argued the soundness of opinions supportive of established authority. Locke was painfully aware of the difficulty and danger of not having a stable moral foundation of human societies which was accessible to the reason of at least the most worthy searchers. By contrast, Hume and Smith were, on the whole, both remarkably confident of, and may be said to have overestimated, the stability over time and the potential consensus across social classes, of the relatively conservative social relations and legal forms that they favoured. Smith's relative complacency on behalf of a conventionalist morality seems particularly misguided in his age of rapid economic development and

18. Hume, *A Treatise of Human Nature*, III,2,2 (p.545); *Political Essays* ('Of the Original Contract', p.197); also Smith, *Lectures on Jurisprudence* (A), V,115-19.

19. Hume, *A Treatise of Human Nature*, III,2,2 (p.545); *Political Essays* ('Of the Original Contract', pp.195-96).

20. For Smith, the key passages are in *Lectures on Jurisprudence* (A), V,119-27.

emerging social mobility, not least in view of his historical sociology of relations of dominance, dependency, and property, set out in *the Wealth of Nations*.²¹

When it came to first principles, there really is no denying that the American tradition became overwhelmingly conceptualised in a tradition of God-sanctioned individual rights, complete with conventional vocabularies of state of nature, contract, and consent. But we shall see that this tradition was often rather un-Lockean in its concern with public opinion and political legitimacy, in its radical and democratic thrust, and in the introduction with some authors, notably Jefferson and Paine, of a relatively conventionalist and pluralist political constitutionalism. In their deliberations over the historical meaning and consequence of first principles, which were coupled to a republican language of democratic self-government, Hume's 'opinion' became rather more political than the latter would have wished. When we turn to the discussion of the shape of *libertas* in America, in order to appreciate these matters we shall need to say a few words about two authors who, along with the earlier works of Sidney, were key transporters of a political rights discourse to America which was peculiarly tailored to the New World and its new men, and which had distinct republican aspects - I have in mind Reid and Paine. For now, we turn to other important 'liberal' challenges to republicanism.

3. Interest, Faction, and Institutional Architecture

If Scottish sociological jurisprudence had less purchase in America than the language of natural rights, the effects of Hume's views on institutional design are difficult to overlook.²²

Hume's work was one of the most important articulations of a key anti-republican argument. Several of his political essays explicitly considered standard republican views about the need for civic virtue to check the corruption of even the best of political institutions. Hume's answer amounted to saying that civic virtue is very often more of a problem than a solution, and that the natural propensities of man may be put to better use inside a deliberately constructed machinery of government which renders virtue redundant.

Hume's position on virtue may usefully be contrasted to that of Harrington and to Trenchard & Gordon's *Cato's Letters*. We already noted how these authors, and most particularly Harrington, had reduced the republican language of virtue to one of rational self-interest in security, but cut lose from the normative horizon of sacrifice and honour which was retained in Sidney. We also noted a distinctly un-Machiavellian complacency regarding the possibility of constructing a self-perpetuating system of self-interest. To Cato, the world was very much governed by passions and egoism which had to be controlled. Only, varieties in "the Genius of

21. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*; Dunn (1983:133-35).

22. Draper (1982).

passions and egoism which had to be controlled. Only, varieties in "the Genius of political Constitutions" were likely to produce different outcomes of virtue and liberty in different places. Making things significantly easier for themselves by largely ignoring Harrington's levelling *agrarian law*, they assumed the feasibility of schemes that effectively equated or inter-linked the interests of the governed and their representatives, thus rendering civic virtue a relatively simple matter of controlling and occasionally punishing the corrupt.²³

Like Trenchard and Gordon, also Hume started from Harrington. But while the authors of *Cato's Letters* could confidently state that "[p]olitical Jealousy ... in the People is a necessary and laudable Passion",²⁴ Hume was much less prone to rely on classical virtues:

The ages of the greatest public spirit are not always eminent for private virtue. Good laws may beget order and moderation in the government, where the manners and customs have instilled little humanity or justice into the tempers of men

A man who loves only himself ... without public spirit, or a regard to the community, is deficient in the most material part of virtue. *But this is a subject which needs not be longer insisted on at present* There are enow of zealots on both sides who kindle up the passions of their partizans, and under pretence of public good, pursue the interests and ends of their particular faction. For my part, I shall always be more fond of promoting moderation than zeal ... ²⁵

Hume certainly agreed with the Harringtonians that political prudence demanded the institutional balancing of interests, assuming as a general "*political maxim, that every man must be supposed a knave*", even if he was an honest man in his private affairs. But his observations of political and religious unrest in Europe made him far more keenly aware that more dangerous sources of faction arose from differences over *principle*, "especially abstract speculative principle", be it disagreement over the sources of political authority, or the particularly vicious conflicts over Christian doctrine. Hume also lauded the truly patriotic, but "moderate and consistent" exercise of criticism and "*a suitable degree of zeal*", and favoured freedom of the press (but not "*the unbounded liberty of the press [which] ... is one of the evils, attending ... mixt forms of government*") as a check on political authority to that end. Even so, by intuition and temper, Hume was inclined to stress the hazards of all sorts of new "enthusiasm" and irresponsible political and religious leaders who

23. Trenchard & Gordon, *Cato's Letters*, 13.

24. Trenchard & Gordon, *Cato's Letters*, 33.

were capable of arousing the mob, turning newly acquired liberties into dangerous license.²⁶

But also as regarded the politics of interest, Hume placed a different, more conservative emphasis. He disagreed with Harrington's view that only a relatively egalitarian (agrarian) republic was feasible in the long run in Britain, were liberty to be preserved. In an age of commerce (which Hume, as we shall see, welcomed for other reasons) large inequalities of property and corresponding inequalities in the capacity to wield political influence were inevitable. This somewhat changed the structure of the problem of interest. Hume's disagreement with Harrington's view that government was founded on property was not over the importance of private interest and the politics of jealousy of property as such, but over the nature of the institutional balance between relations of property and power. Where Harrington's political mechanics in *Oceana* were about the balancing of the stable interests of the different natural orders of society, Hume's science of government was aimed at a more subtle functional balancing of different parts and groups in the political system, capitalising on certain universal human propensities to power and self-interested action, but also relying on the popular 'opinion of interest' and the 'opinion of right' to property and authority, which we already noted. Such opinion, in Hume's view, was after all *antecedent* to interest, and, again, generally supportive of tried and established forms, even as property relations changed in civil society.²⁷

But if Hume relied on public opinion of a conservative bent, he also believed that steps towards a more democratic, republican order were likely to jeopardise the stability of such established conceptions of authority. Hume was afraid of situations where passions of religion and party would seize the minds of the many. But he was equally afraid that people's opinions of their interest would change. By

25. 'That Politics May be Reduced to a Science', Hume, *Political Essays* (pp.11-12, italics added). Note the rhetorical hijack of the traditional republican virtue of moderation.

26. 'Of the Liberty of the Press', 'Of the Independency of Parliament', 'Of Parties in General', 'That Politics may be Reduced to a Science', 'Of Superstition and Enthusiasm' (Hume, *Political Essays*, pp.3,14,24,36,46). According to Hume,

such is the nature of the human mind, that it always lays hold on every mind that approaches it; and as it is wonderfully fortified by an unanimity of sentiments, so it is shocked and disturbed by any contrariety. Hence the eagerness, which most people discover in a dispute; and hence their impatience of opposition, even in the most speculative and indifferent opinions. This principle, however frivolous it may appear, seems to have been the origin of all religious wars and divisions ('Of Parties in General', Hume, *Political Essays*, p.37)

27. For Hume's discussion of Harrington see the essays 'Of the Origin of Government' and 'Whether the British Government Inclines More to Absolute Monarchy, or to a Republic', in *Political Essays*.

historical chance, England had found a system of government which, if properly understood and maintained, could be rendered stable. But the legitimacy of its relations of property and political authority had no solid moral foundations, and Hume had no illusions whatsoever about the arbitrary and violent original acquisitions of both. He had only prudential arguments to offer in their favour and was intensely aware that such arguments would have less purchase if the people grew out of their established habits of allegiance. This Humean fear of faction, in particular the faction of the licentious, passionate or - perhaps most importantly - property-envious majority, in a less than perfect world, was to become prominent in parts of the American debate, in Madison and particularly in Hamilton.²⁸

So were many of the particulars of Hume's discussion of a science of politics which favoured liberty, and which was based on assumptions of private interest and love of dominion. The first aspect of this was Hume's resolute debunking of classical republican references. Much like Montesquieu, whose (republican) concern with the importance of law he shared, Hume believed that the world had never before seen as much individual liberty - of the press, of religion, of property rights, and against arbitrary taxation - as was currently enjoyed under the constitutional English monarchy. This was not the result of a return to 'ancient' popular liberties, stolen by the Stuarts and now restored by the Parliament. Instead, Hume saw it as the outcome of a peculiar balance which emerged from the Glorious Revolution. Now, the Crown, though possessing immense wealth as well as constitutional executive powers, still depended on the parliament for finance. And, making deliberate play with conventional republican understandings of *mixed government*, Hume argued that despite the king's formal veto, the parliament "whenever it pleased, might swallow up the rest, and engross the whole power of the constitution", were it not for the king's chief countervailing resource, the creation of personal client relations through the extension of offices and privileges to both houses of parliament. Thus, Hume's provocative assertion that,

We may ... give to this influence what name we please; we may call it by the invidious appellations of corruption and dependence; but some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of our mixed government²⁹

Secondly, although "AUTHORITY and LIBERTY" were in principle always in conflict, Hume was favourably disposed to a strong, central political authority as a guarantee of lawfulness. Men being often inclined to seek their narrow interests "by fraud or rapine", they must "endeavour to palliate what they cannot cure". They need

28. Diggins (1986:53,61).

29. 'Of the Independence of Parliament', Hume, *Political Essays* (pp.25-26).

magistrates, whose peculiar office it is to point out the decrees of equity, to punish transgressors, to correct fraud and violence, and to oblige men, however reluctant, to consult their real and permanent interests. In a word, OBEDIENCE is a new duty which must be invented to support that of JUSTICE; and the ties of equity must be corroborated by those of allegiance³⁰

Given the right conditions, Hume was rather less afraid of abuses of power in a monarchy than in a republican government. By and large, against Machiavelli who on this point was in error on account of "his having lived in too early an age of the world, to be a good judge of political truth", Hume was of the opinion that

It may now be affirmed of civilized monarchies, what was formerly said in praise of republics alone, that they are a government of Laws, not of Men. They are found susceptible of order, method, and constancy, to a surprising degree. Property is there secure; industry encouraged; the arts flourish³¹

The reasons for this Hume found in the relative incentive structures or relations of "jealousy" of the two forms. In a monarchy,

a legal authority, though great, has always some bounds, which terminate both the hopes and pretensions of the person possessed of it: The laws must have provided a remedy against its excesses: Such an eminent magistrate has much to fear, and little to hope from his usurpations: And as his legal authority is quietly submitted to, he has small temptation and small opportunity of extending it farther³²

A monarch would always have to be afraid of the eventual erosion of the public opinion on which his authority rested, and Hume made much of the potential of monarchies to learn and to redress their abuses of power which were really results of mistaken interest.³³

However, if England were a republic,

and were any private man possessed of a revenue ... even a tenth part as large as that of the crown, he would very justly excite jealousy; because he would infallibly have great authority in the government: and such an irregular authority, not avowed by the laws, is always more dangerous than a much greater authority, derived from them. A man, possessed of usurped power, can set no bounds to his pretensions: His partizans have

30. 'Of the Origin of Government', Hume, *Political Essays* (pp.21-22).

31. 'Of Civil Liberty', Hume, *Political Essays* (pp.51,56).

32. 'Whether the British Government Inclines More to Absolute Monarchy, or to a Republic' (Hume, *Political Essays*, p.30).

33. 'Of Civil Liberty', Hume, *Political Essays* (pp.56-57).

liberty to hope for everything in his favour: His enemies provoke his ambition ... every corrupted humour in the state naturally gathers to him³⁴

Thirdly, from his general thoughts on the balancing of interest Hume derived a blue print "Idea of a Perfect Commonwealth". This was a conception of a representative republic based on a critique of Harrington's *Oceana*, which was to be very influential in America, and which Hume himself believed was a useful thought experiment "that we may be able to bring any real constitution ... as near it as possible, by ... gentle alterations and innovations". Hume's general idea, which was to be adopted in *The Federalist Papers*, nos. 10 and 51, was that

a republican and free government would be an obvious absurdity, if the particular checks and controuls, provided by the constitution, had really no influence, and made it not the interest, even of bad men, to act for the public good³⁵

Such "checks and controuls" were the means to tab and exploit the propensities of men, organised *in parties*, to act according to "the separate interest of each court, and each order", forgetting their private honour which is otherwise "a great check upon mankind". Once prudently instituted, they would render less important the transient propensity to virtue of historical individuals, indeed

so little dependence have they on the humours and tempers of men, that consequences almost as general and certain may sometimes be deduced from them, as any which the mathematical sciences afford us³⁶

Hume's "Perfect Commonwealth" featured such ideas as an indirectly elected senate with executive powers combined with directly elected local county representatives with legislative powers, with the senate proposing and debating, and with the presumably less wise and more easily swayed representatives only debating in their "separate bodies"; fairly stiff property requirements limiting electors to the classes of "freeholders of twenty pounds a-year in the country, and all the householders worth 500 pounds in the town parishes" ("not by an undistinguished rabble, like the ENGLISH electors, but by men of fortune and education"); a system of decentralised county legislation where "[e]very county is a kind of republic within itself"; a "court of *competitors*" serving as inspector and controller of the senate; and powers of expulsion in the senate of "any factious member". The Commonwealth could

34. 'Whether the British Government Inclines more to Absolute Monarchy, or to a Republic', Hume, *Political Essays* (p.30).

35. 'Idea of a Perfect Commonwealth', 'That Politics May Be Reduced to a Science', Hume, *Political Essays* (pp.5,221-22).

36. 'That Politics May Be Reduced to a Science', 'Of the Independence of Parliament', Hume, *Political Essays* (pp.5,24-25).

avoid the dangers of both "combination" of majorities in the senate against the people, and "factions" of separate interests, because of the relatively limited number and powers of the former, its annual reelection, the existence of the court of competitors, and the powers of expulsion. All this added up to a situation where the "chief support of the BRITISH government" would be "the opposition of interest", and all served to dispel the

common opinion, that no large state, such as France or Britain, could ever be modelled into a commonwealth, but that such a form of government can only take place in a city or small territory³⁷

As we shall see, the federalist side in the American debate was to make a number of central Humean points about interest, internal checks and balances, the dangers of factions and majorities, and the possibility of a large, representative republic. But we shall also see that even this framework could be combined, although it certainly was not always, with a surviving, if chastened, language of civic virtue and the common interest, which was all but lacking in Hume.

4. The Discourse on Commerce and Civil Society

Hume's and Montesquieu's transformations of the political theory of interest were part of a larger intellectual reversal, already noted in the previous chapter, of the old republican theme of the dangers of commerce, luxury, and corruption of virtue. These ideas provided the building blocks for new notions of 'civil society' which were to challenge important aspects of the republican liberty argument.

Eighteenth century writers found many effects of commerce that commended it in its own terms. The wealth, the alleviation of poverty and illiteracy, the cultural and scientific progress, and the innovation and refinement of sea-trading nations like the Netherlands and Britain could not help being noticed. But in addition, distinctly political arguments were advanced, i.e., arguments not just about the compatibility of commerce and liberty (which republicans might now be willing to grant), but also about commerce as a, possibly *more* effective, way to advance liberty. At its most general, Smith, momentarily forgetting Montesquieu, claimed that "Mr Hume is the only writer who ... has hitherto taken notice" of the fact that

commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals³⁸

In our context, several closely linked aspects of the emerging discourse on commerce and civil society may be noted.

First, of all, commerce was linked to *the cooling of passion*. Albert Hirschman famously traced the manner in which economic self-interest evolved as a beneficial

37. 'Idea of a Perfect Commonwealth', Hume, *Political Essays* (pp.223,225-29,232).

38. Smith, *Wealth of Nations*, III,4 (p.412).

social disposition from the general and much older idea of "taming" certain dangerous and disruptive passions and vices with less dangerous ones, i.e.,

that one set of passions, hitherto known as greed, avarice, or love of lucre, could be usefully employed to oppose and bridle such other passions as ambition, lust for power, or sexual lust³⁹

To Hume, all human volition was a result of passion, but the strongest passion of all was that of "acquiring goods and possessions for ourselves and our nearest friends". This passion was "insatiable, perpetual, universal, and directly destructive of society". It was also, however, a constant predisposition which could be checked, as we have seen, by institutional architecture. There were other, more fleeting, but all the more violent and potentially disturbing passions, including "envy and revenge" which "tho' pernicious ... operate only by intervals, and are directed against particular persons". In Hume's political essays this was nevertheless what made such sentiments, along with the passions of religious and political enthusiasm, so much more dangerous. Hume's relative optimism about the possibility of political navigations on the assumption of self-interest depended on his belief that commercial society would render the more violent passions increasingly rare.

Among the several aspects of the idea, probably most important was the notion, classically formulated by Smith, that the "natural effort of every individual to better his condition, when suffered to exert itself with freedom and security" was a constant, predictable, widespread, and thus a *calculable* passion, and for this reason indeed "the most reasonable". Indeed, whatever their virtuous intentions, it might be positively dangerous if too many individuals acted with idealistic *zeal* for the public interest rather than following the (group)interest of the crowd. According to Stewart, another of the Scottish philosophers, "were everyone to act for the public, and neglect himself, the statesman would be bewildered", not least because "[e]veryone might consider the interest of his country in a different light".⁴⁰

This was a potentially far-reaching rebuttal of the old language of patriotism. Not only could the counterbalancing of interests guarantee order and liberty, the exercise of patriotic virtue could be presented as a part of the problem. Against the republican mainstream including, here, even Montesquieu, the *rational*, common-interest core of patriotism was effectively subdued - for the sake of a *habitual* and essentially passive allegiance - by equating patriotism with religious disputes over principles that were "utterly absurd and unintelligible".⁴¹

39. Hirschman (1977:41, italics in original).

40. Smith, *Wealth of Nations*, IV,5,b,43 (p.540); 'Of Parties in General', Hume, *Political Essays* (p.36); Sir James Stewart, *Inquiry into the Principles of Political Oeconomy*, ed. by A.S. Skinner, Chicago: University of Chicago Press, 1966, Vol. I, pp.143-44, cited from Hirschman (1977:50)

41. 'Of Parties in General', Hume, *Political Essays* (p.36).

By contrast, the art of making money in the marketplace now often was described, not only as less morally deplorable in the first place because of emerging understandings of the beneficial economic effects of trade and accumulation for investment, but as a rational, calm activity of self-control, to be distinguished from the senseless greed for riches that cannot wait, and which may be self-defeating in the long run.

Apart from taming more dangerous passions, commerce also brought new virtues with them. Trade required and helped produce networks of trust, between nations and between individuals, and it put a premium on punctuality and the respect for contract. With the rise of modern political economy where trade was no longer seen as a zero-sum game, frugality and a spirit of restless entrepreneurship and innovation were assimilated with the older ethic of work to form an emerging, robust and modern 'capitalist' ideal of socially beneficial private activity, which was to be prominent in America.

But if such 'bourgeois' virtues effectively reversed the old republican conception of civic virtue (which is not to say that the two could not be combined, as indeed they were), the emerging discourse of commercial society also heralded an entirely new set of social or civil virtues. Since Montesquieu, civility or 'politeness' had become part of a standard contrast between modern commercial nations which possessed it, and ancient or less developed, 'rude' nations which did not. Commerce became seen as a form of interaction which required and generated its own form of social competences, and these in turn became part of a wider conception of the proper social intercourse of a 'civil society'.

To Montesquieu,

Commerce cures destructive prejudices, and it is an almost general rule that everywhere there are gentle [*doux*] mores, there is commerce ... Commerce has spread knowledge of the mores of all nations everywhere; they have been compared to each other, and good things have resulted from this⁴²

To Hume, nothing was more conducive to "*politeness and learning, than a number of neighbouring and independent states, connected together by commerce and policy*". Such interaction produced a tendency to competition and self-criticism in all the arts and sciences, where "contention and debates sharpened the wits of men".⁴³

Montesquieu, noting that "[t]he more people there are in a nation who need to deal with each other and not cause displeasure, the more politeness there is", distinguished between the politeness of a free people busy with its own interests, and the "politeness that is founded on idleness", between "the politeness of moers"

42. Montesquieu, *Spirit of the Laws*, XX,1.

(found in Britain) and "that of manners [*celle des manières*]" (found in France). Hume thought that the effects of commerce in a republic were most likely to be in the fields of sciences and useful inventions. In a monarchy, where often the liberty was abridged "of reasoning, with regard to religion and politics, and consequently metaphysics and morals ... the most considerable branches of science", Hume, less negatively inclined than Montesquieu even towards French absolutism, considered the ground more fertile for the development of "a refined taste", because an individual had to make himself "*agreeable*, by his wit, complaisance, or civility".⁴⁴

Politeness was linked to the arts of conversation and gallantry:

Among the arts of conversation, no one pleases more than mutual deference or civility, which leads us to resign our own inclinations to those of our companion, and to curb and conceal that presumption and arrogance, so natural to the human mind⁴⁵

Hume then took the further step of considering not just commerce, but also *luxury*, a result of trade and industry in a free country. In stark contrast to republican discourse, his verdict was favourable. A quarter of a century before, in his *The Grumbling Hive* (later defended in *The Fable of the Bees*), Bernard Mandeville had shocked his contemporaries with his image of a bee hive where, "every Part was full of Vice / Yet the whole Mass a Paradise". Some of Mandeville's ideas vaguely foreshadowed Hume's institutional balancing of self-interest ("This was the State's Craft, that maintain'd / The Whole of which each Part complain'd / ... / Parties directly opposite / assist each other, as 'twere for Spight"). But in claiming that "The worst of all the Multitude / Did something for the Common Good", Mandeville's main point was about the socially beneficial impact of luxury.⁴⁶

Hume paid lip service to the conventional distaste with Mandeville's text by distinguishing between "innocent" and "vicious luxury", the latter being such gratifications which engross "all a man's expense, and leaves no ability for such acts of

43. 'Of the Rise and Progress of the Arts and Sciences', Hume, *Political Essays* (p.64, italics in original).

44. 'Of the Rise and Progress of the Arts and Sciences', Hume, *Political Essays* (p.69, italics in original); Montesquieu, *Spirit of the Laws*, 3,XIX,27.

45. 'Of the Rise and Progress of the Arts and Sciences', Hume, *Political Essays* (pp.69-70).

46. Luxury, said Mandeville,

Employe'd a Million of the Poor, / And odious Pride a Million more: / Envy itself, and Vanity / Were Ministers of Industry / Their darling Folly, Fickleness, / In Diet, Furniture and Dress, / That strange redic'lous Vice, was made / The very Wheel that turn'd the Trade / ... / Thus Vice nurs'd Ingenuity, / Which join'd with Time and Industry, / Had carry'd Life's Conveniencies, / It's real Pleasures, Comforts, Ease, / To such a Height, the very Poor / Liv'd better than the Rich before, / And nothing could be added more (Mandeville, *The Fable of the Bees*, pp.24-26).

duty and generosity as are required by his situation and fortune". Vicious luxury was treated cursorily as a lesser social evil than the "sloth" and "idleness" which would follow from a total abolition of luxury. Instead Hume stressed that as "men become acquainted with the *pleasures* of luxury and the *profits* of commerce ... their *delicacy* and *industry*, being once awakened, carry them on to farther improvements". Thus,

The mind acquires new vigour; enlarges its powers and faculties; and by an assiduity in honest industry, both satisfies its natural appetites, and prevents the growth of unnatural ones⁴⁷

Moreover, "refinements in the mechanical arts ... commonly produce some refinement in the liberal". Such refinement was directly linked to growth in social virtues, social differentiation, and "humanity":

The more these refined arts advance, the more sociable men become (...) They flock into cities; love to receive and communicate knowledge; to show their wit or their breeding; their taste in conversation or living ... Curiosity allures the wise; vanity the foolish; and pleasure both. Particular clubs and societies are every where formed (...) It is impossible but they should feel an increase of humanity, from the very habit of conversing together ... Thus *industry*, *knowledge*, and *humanity*, are linked together by an indissoluble chain ... peculiar to the more polished, and ... the more luxurious ages⁴⁸

Not *amor patriae*, people's courage in war "in defense of their country and their liberty" would be jeopardised, by the spread of luxury. In a further radical challenge to republicanism, Hume claimed that,

if anger, which is said to be the whetstone of courage, loses some of its asperity, by politeness and refinement; a sense of honour, which is a stronger, more constant, and more governable principle, acquires fresh vigour by that elevation of genius which arises from knowledge⁴⁹

Hume's reversal of the republican language of virtue, corruption, and patriotism was part of a broader Enlightenment attempt to show that the 'moderns' were after all more civilised than the 'ancients', their liberty worth more and more securely enjoyed. In standard republican terms, virtue and patriotic sacrifice was associated with a fragile and easily corruptible frame of mind, of maturity, independence, and rational understanding and love of one's country. This language was discredited by Montesquieu, Hume, and French philosophers from Voltaire to Constant, who, with

47. 'Of Refinements in the Arts', Hume, *Political Essays* (pp.101,106-7,113).

48. 'Of Refinement in the Arts', Hume, *Political Essays* (p.107).

49. 'Of Refinement in the Arts', Hume, *Political Essays* (p.109).

varying degrees of respect for the ancients were keen to show the dangers of Hume's political or religious 'zeal', or to imply, in the words of Constant against the Jacobites, that "the victories won by the austere republicanism of antiquity over natural inclinations, became the pretext for the unrestrained eruption of selfish passions". As ancient civic virtue became equated at best with backward rusticity, and at worst with one-eyed fanaticism and dangerous passion, its superior modern counterpart became the civility or politeness of general enlightenment, taste, and cosmopolitan enjoyment of diversity. This virtue was still 'public', but the arena of its typical daily exercise became the social and cultural interchanges of the new 'civil society', the club, the *salon*, or the park.⁵⁰

Hume's affair with Mandeville aimed to demonstrate the unexpected origins of recognisable social virtues in civil conduct. However, his complacency about the civilising effects of commerce was not shared by such figures of the Scottish Enlightenment as Adam Ferguson and Adam Smith, who remained far more sensitive to republican arguments.⁵¹ To Smith, who used a language which we may recognise from Montesquieu and particularly Rousseau, commerce was associated with the capricious and fantastic, with childishness and vanity, and with the tendency for visible riches to become the objects of a hollow worldly esteem. In Smith's account of the origins of commercial society from the unintended effects of the actions of different social classes, "the most childish vanity was the sole motive of the great proprietors" who were bent on acquiring "the wantonness of plenty ... trinkets and baubles, fitter to be the playthings of children than the serious pursuits of men". But even the calculated, goal-oriented self-interest of "merchants and artificers" who were "much less ridiculous" did not really signify a greater degree of reason or enlightenment. Hume's polite society was depicted remarkably differently by Smith. While recognising that upward social mobility was a safety vault in a Humean world of 'opinion', in his *Theory of Moral Sentiment* he could still ask

to what purpose is the toil and bustle of this world? what is the end of avarice and ambition, of the pursuit of wealth, of power, and preheminance? ... From whence ... arises that emulation which runs through all the different ranks of men, and what are the advantages which we propose by that great purpose of human life which we call bettering our condition? To be observed, to be attended to, to be taken notice of with sympathy, complacency, and approbation, are all the

50. Constant, *The Spirit of Conquest and Usurpation and their Relation to European Civilisation*, II,8. The cultural history of this 'polite' or 'civil' urban culture is traced by Sennett (1986).

51. See in particular Winch (1978) and essays in Hont & Ignatieff (1983).

advantages which we can propose to derive from it. It is the vanity, not the ease, or the pleasure, which interests us⁵²

Nevertheless, Smith was to make the further and far-reaching move of analysing in detail the independently beneficial, unintended effects of *private vice* (although he spoke now of 'interest') in the *economy*, thus making it possible for less subtle political economists to suggest that an invisible hand enabled economics, in Hirshman's words, to "go it alone", and that a state with more than night watchman functions was more of a problem than a solution. Here, "the natural interests and inclinations of men coincide ... exactly with the political interest".

Without any intervention of law, therefore, the private interests and passions of men naturally lead them to divide and distribute the stock of every society ... as nearly as possible in the proportion which is most agreeable to the interest of the whole society⁵³

Eventually such 'market liberalism' could also be presented in a less depraved and Mandevillean light, as a right-anarchist economic civil society of free, spontaneously interacting contractors with no need for politics, let alone civic virtue.

The father of modern economics certainly did not himself draw such conclusions, nor should the early American reception of *laissez-faire* be interpreted in the light of ideological components that were only added in the next century. But what came to be found in America, as we shall see, was a new republicanism of limited government, where a traditional language of the dangers of (excessive) commerce was employed, not without tensions, alongside a language of *libertas* which linked civic virtue to enjoyment of the maximum freedom of the individual from the state to pursue his private economic affairs.

5. The Idea of Progress

The discourse of commerce and civil society was part of a more general Enlightenment challenge to the most basic presumptions of republican political cosmology. This challenge was constituted by the idea of *progress*. The republican conception of political time that came out of the Renaissance has already been discussed. We recall the Polybian and Machiavellian analyses of the cyclical movements of virtue, corruption, and decay of political artifices and civic spirit alike, which statesmen and citizens could only delay for a while. We also noted the corresponding tendency to view history as a repository of essentially timeless exemplars.

The Enlightenment saw a whole range of attempts to rationalise political contingency by conceptualising political institutions, forms of social life, and various

52. Smith, *Wealth of Nations*, III,4 (pp.421-22); Smith, *Theory of Moral Sentiments*, I,iii,2,1; cp. Montesquieu, *Spirit of the Laws*, XIX,27.

human capacities and propensities as outcomes of historical processes of steady progress. Such progress philosophy, not all of which was liberal and some of which has been likened to secular eschatologies,⁵⁴ was united by

the assumption that a pattern of change exists in the history of mankind, that this pattern is known, that it consists of irreversible changes in one direction only, and that this direction is towards improvement from 'a less to a more desirable state of affairs'⁵⁵

As already glimpsed, the writers of the Scottish Enlightenment primarily used economic, materialist models of progress. Much like Hume, Smith saw modern forms of social organisation, including property, law, and state as characteristic of the last of four stages of a historical process driven by the human propensity to truck and barter. The stages were treated as ideal types of empirical correlations between modes of subsistence and forms of authority, and shifts between them depended upon the (unintended) effects of complicated chains of social action, economic behaviour, and scientific invention. The Scottish political economists hardly viewed these developments as *automatically* leading to progress in political institutions. Hume was as concerned as any about the fragile and historically contingent institutions that had come out of the British revolution. But although, like Smith, he refused to regard the legal and political forms of his contemporary society as reflecting a larger moral order, and despite his thoughts about 'opinion', he did regard them as *functional* to the most important interests of the new commercial society in which he was living, where "the encrease of commerce ... threw such a balance of property into the hands of the commons".⁵⁶

The British thinkers were of an empiricist and sceptical bent, and their political experience made them expect and welcome gradual rather than revolutionary change. Also, despite Hume's concern with political institutions and laws, they did not share the more radical hopes for immediate human improvement through rational legislation that were tended by many of the French *philosophes*. What they did share, apart from their reliance on the all but inevitable and beneficial development of commerce and industry, was the belief in the steady increase in *science*.

53. Hirschman (1977:103); Smith, *Wealth of Nations*, IV,7,c (p.630), also VI,5,b (p.540).

54. See Becker (1932).

55. Pollard (1968:v, citing Charles Van Doren, *The Idea of Progress*, New York, 1967).

56. "Where luxury nourishes commerce and industry, the peasants, by a proper cultivation of the land, become rich and independent; while the tradesmen and merchants acquire a share of the property, and draw authority and consideration to that middling rank of men, who are the best and firmest basis of public liberty (...) They covet equal laws, which may secure their property, and preserve them

Hume, Smith, and Ferguson, as Locke before them, all thought that human nature and man's most basic propensities were constant. Only their fund of common knowledge gradually improved, by accumulated experience, by the diffusion of trade and innovation, and by rising education. All agreed with Ferguson that

When nations succeed one another in the career of discoveries and inquiries, the last is always the most knowing. Systems of science are gradually formed ... the history of every age ... is an accession of knowledge to those who succeed⁵⁷

If the Scots stressed the application of elite knowledge to prudential institutional design or to understanding the workings of the economy, most of the French, with possible exceptions like Voltaire, were rather more optimistic in their hopes for a more general spread of enlightenment to the common man, allowing him to free himself from the tutelage of religious prejudice and superstition, to act in the best knowledge of his own interests, and even to increase, by rational means, the sum of individual and social happiness. Eventually, some philosophers took the last step of believing that progress would happen "not only in knowledge, in wealth or in social organisation alone", but also "in the character and nature of human beings themselves".⁵⁸ The most uncompromising statement of the belief that also vice and evil was a product of ignorance and prejudice which, once dispersed by science, need not return, was that of Condorcet, who claimed, in the *Esquisse d'un tableau historique de progrès de l'esprit humain*, that

People cannot become enlightened about the nature and development of their ethical sentiments, the principles of morality, the natural needs to which their actions conform, or their own interests, either as individuals or as members of a society, without also making progress in moral conduct which is no less substantial than that made within science itself⁵⁹

from ... tyranny" ('Of Refinement in the Arts', Hume, *Political Essays*, p.112). For Smith's view, see Winch (1978:70-102).

57. Ferguson, *An Essay on the History of Civil Society*, I,5 (p.33).

58. Pollard (1968:68).

59. Condorcet, *Esquisse d'un tableau historique de progrès de l'esprit humain*, Dixième époque (pp.226-27) (own translation). Condorcet rhetorically asked,

L'intérêt mal entendu n'est-il pas la cause la plus fréquente des actions contraires au bien général? (...) Cette conscience de sa dignité qui appartient à l'homme libre, une éducation fondée sur une connaissance approfondie de notre constitution morale, ne doivent-elles pas rendre communs à presque tous les hommes, ces principes d'une justice rigoureuse et pure, ces mouvements habituels d'une bienveillance active, éclairée, d'une sensibilité délicate et généreuse, dont la nature a placé le germe dans tous les coeurs, et qui n'attendent, pour s'y développer, que la douce influence des lumières et de la liberté?

Condorcet's vision of progress was perhaps the most radical Enlightenment departure from republican political cosmology. It constituted the early high point of a larger, optimistic counter discourse that may be traced in utilitarians from Helvetius to Bentham, in much of the Kantian tradition, and in liberal idealism from Hegel to Hobhouse. The details of this do not concern us here. What needs to be noted, however, is that even inside this relatively hostile ideological environment, it is still possible to discern more or less republican emphases, in the Scottish Enlightenment as well as later, in the New World.

6. The Naturalisation of Virtue: Sympathy and Moral Sense

If Newton and the rise of science was a main source of Enlightenment beliefs in progress, and contemporary improvements in commerce, wealth, and - at least in Britain - political liberty was another, a third was the moral psychology of Locke.

Locke introduced the idea that human nature was constant and predictable, and that moral habits could be moulded by inducements and education within the limits of a sensationist psychology that linked individual well-being with a measure of sympathy for others. We noted already the transformation of civic virtue into the civility and politeness of society, and the *bourgeois* virtues of frugality, enterprise, and economic trustworthiness. British empiricist moral psychology enabled the further belief that the virtue of which individuals were capable was a 'natural' or at least a relatively stable outcome of social life as such - including commercial interaction - and *not* a fragile element of personal character which was constantly threatened by the corrupting temptations of power, wealth, and the ease of a private life. It was the development of these Lockean ideas from Hutcheson to Smith and Hume, rather than the French rationalist tradition, which became influential in American political thought. We shall see that they coexisted, here, in some tension with the earlier, republican discourse of political motivation.

In Locke's own rather crude formulation, virtue arose from the moulding of hedonistic sentiments, and the problem of failure of morality was a problem of failure of rationality. Although our propensity towards instant pleasures often prevented us from understanding that moral action was to our own good (i.e., eternal salvation), virtue as a form of self-discipline could be inculcated (in children) by means of rewards, shaming, and habituation.⁶⁰ Hutcheson developed a much more optimistic conception of utilitarian altruism which postulated the existence of a *moral sense* which caused individuals to equate their desires and feeling of pleasure with

60. For instance, "He that has no Mastery over his Inclinations, he that knows not how to resist the importunity of *present Pleasure or Pain*, for the sake of what Reason tells him is fit to be done, wants the true Principle of Vertue and Industry; and is in danger never to be good for any thing", (Locke, *Some Thoughts Concerning Education*, 45, italics in original). The relevant paragraphs are no. 38-66.

the good of their community.⁶¹ Finally, the more sanguine moves of Hume and Smith were to distinguish between *natural* propensities to limited benevolence and sympathy for the sufferings of immediate others and on the other hand the *artificial* virtues of justice, observation of which had to operate in more subtle ways, as second-order gratifications. Thus to Hume, once the moral norms of justice had been established, as based on the reciprocal interest in security of property,

tho' in our own actions we may frequently lose sight of that interest, which we have in maintaining order ... we never fail to observe the prejudice we receive ... from the injustice of others (...) [I]njustice still displeases us; because we consider it prejudicial to human society ... We partake of ... uneasiness by *sympathy*; and as every thing, which gives uneasiness in human actions ... is call'd Vice, and whatever produces satisfaction, in the same manner, is denominated Virtue; this is the reason why the sense of moral good and evil follows justice and injustice

Although these artificial virtues, which worked as motivations because of our concern with the opinions of others ("the sentiments they entertain of us" and "publick praise and blame"), may be attempted "forwarded by the artifice of politicians", in doing so these politicians only "extend the natural sentiments beyond their original bounds; but still nature must furnish the materials, and give us some notion of moral distinctions".⁶²

In Smith's more sophisticated, less immediately utilitarian version, which was influenced by stoic universalism, sympathy concerned the approbation of the motives of an agent, as well as the feelings of *gratitude* of the person who was the object of the action. This feeling it was possible to share by assuming the role of the "spectator", or the "tribunal within the breast":

Generosity, humanity, kindness, compassion, mutual friendship and esteem, all the social and benevolent affections, when expressed in the countenance or behavior even towards those who are not peculiarly

61. For Hutcheson's views, see Sinopoli (1992:60-63). At the beginning of his *Systems of Moral Philosophy* (book I, chapter I), Hutcheson discusses the view that,

When the soul is calm and attentive to the constitution and powers of other beings, their natural actions and capacities of happiness and misery, and when the selfish appetites and passions and desires are asleep, 'tis alleged that there is a calm impulse of the soul to desire the greatest happiness and perfection of the largest system within the compass of its knowledge.

And Hutcheson starts his discussion by claiming that

Our inward consciousness abundantly testifies that there is such an impulse or determination of the soul, and that it is truly ultimate, without reference to any sort of happiness of our own.

62. Hume, *A Treatise of Human Nature*, III,2,2 (pp.550-51).

connected with ourselves please the indifferent spectator ... His sympathy with the person who feels those passions, exactly coincides with the concern for the person who is the object of them⁶³

Recently, attention has been brought to the degree to which moral sense psychology of Lockean, Humean, and Hutchesonian origin permeated early American political discourse.⁶⁴ But we shall see that also this Enlightenment departure from republican assumptions is only half the story. It cannot entirely account for the continuing importance to many of the founders of avoiding the dangers of corruption and enabling the best of men's propensities - however 'natural' their original seeds in the potential of humans - to be nurtured and preserved in politics. That this was so may also be glimpsed in the work of Adam Ferguson.

7. A Scottish Interlude: Ferguson's Republican Civil Society

All aspects of the liberal or proto-liberal discourses of natural rights, institutional architecture, commerce, softening of passions, human progress, and moral sense psychology had their American manifestations, some of which we shall encounter as we proceed. But even as they did, we shall see that important republican arguments and conceptions of politics and liberty survived, at least for some time and in some authors, inside the general framework of the American Enlightenment.

But illuminating ambiguities were visible already in the European writers. Rousseau's unequivocal, open-eyed rejection of polite society and *doux commerce* in the name of a staunch, Spartan republicanism has been discussed already. But there were other authors who were more ready to accept the superiority of the moderns in terms of wealth and material comforts, political institutions, knowledge and science, and docile manners, and even willing to be reconciled to the prospects of an inevitable decline of dignity and human autonomy in that one-dimensional life of specialisation and private consumption which Rousseau so despised. Yet these authors nevertheless still had their doubts about the *political* soundness and stable future liberty of societies with diminishing civic virtue.

Adam Smith deplored the alienating effects of the new division of labour, so important to the generation of wealth, and did so also on independent political grounds. In a discussion of modern and ancient education, he noted as an effect of the division of labour, whereby "the employment of the far greater part ... comes to be confined to a very few simple operations", that such individuals had become

not only incapable of relishing or bearing a part in any rational conversation, but of conceiving any generous, noble, or tender sentiment, and consequently of forming any just judgment concerning many even of the ordinary duties of private life. Of the great and

63. Smith, *Theory of Moral Sentiments*, I.ii.4.2, III.2.31.

64. Sinopoli (1992:39-82).

extensive interest of his country he is altogether incapable of judging; and unless very particular pains have been taken to render him otherwise, he is equally incapable of defending his country in war⁶⁵

However, it was above all Ferguson who stood out as the author who combined a set of mainstream Enlightenment analyses of the civilising effects of commerce and general social prosperity on institutions, manners, and science, with a republican analysis of corruption. Ferguson's contribution was important as a bridge in the transfer of republican discourse into the new framework of civil society. All of his views may be seen as conscious republican attempts to resist implications of the ideas about civil society which were advanced in particular by Ferguson's friend David Hume.⁶⁶

Ferguson accepted the prevailing moral sense framework of his time and argued that while man was partly motivated by a sense of "interest" in the "preservation of our animal nature", he was also an inherently social creature, equally guided by a natural sense of "disinterested benevolence" and prone to seek the numerous comforts of living in groups, i.e., the manner in which, *contra* Rousseau, they always had lived. While employing a Smithean moral psychology of approbation, sympathy, and sense of justice ("[a]s actors or spectators, we are perpetually made to feel the difference of moral conduct"), Ferguson was more on the Hutchesonian than the Humean side in claiming that often "love and compassion are the most powerful principle of the human heart", that to a person "of an affectionate mind ... he himself, as an individual, is no more part of the whole that demands his regard", and that "public utility [is] the great object at which the actions of men should be aimed".⁶⁷

But in claiming that true happiness consists in actions for the common good, Ferguson used Scottish moral sense language to describe a conception of the person which was different from that of Locke or Hume. Although self-preservation and benevolence were equally 'natural', they were so in the sense of a human potential for self-development to virtuous conduct. While "the desire of self-preservation be more constant, and more uniform", the others constitute a "plentiful source of enthusiasm, satisfaction, and joy". Benevolence and sacrifice, moreover, was a more robust source of satisfaction, because it enables a manly life of "active exertions". Indeed, the "most animating occasions of human life, are calls to danger and hardships, not invitations to safety and ease", and he who never tasted the former "is a stranger to half the sentiments of mankind". Interestingly, much of the first half of the *Essay* takes us about as close as we get to a Pocockian civic humanism of manly self-exertion and moral growth through action as a value

65. Smith, *Wealth of Nations*, V, 1, f (p.782).

66. On the wider issue of the influence of republican discourse in the Scottish Enlightenment, see Robertson (1983).

in itself. This virtue was not 'natural' in the sense of a stable human motivation in all societies. It could not merely be inculcated by education and habituation through ordinary social interaction. Rather, its existence or nonexistence was treated to a republican analysis of collective and individual corruption. The sources of such corruption were many, modern societies evidently encouraging lower and more immediate pleasures, and Ferguson, eventually, was less optimistic about the motivating force of a pure "zeal for the public", and more inclined to appeal to the "jealousy of rights which pertain to themselves" and fondness of personal "independence".⁶⁸

Unlike Hume, and without his scepticism of moral epistemology, Ferguson combined the analysis of moral sentiment with a notion of natural equality in civil society before the institution of property, to reach an idea of natural rights ("to defend their persons, and to act with freedom [and] ... maintain the apprehensions of freedom, and the feelings of the heart"). But if such liberty was naturally befitting all men, the conditions of its realisation and its exact historical form was a matter of historical variations over the well-known idea of *libertas* as equal liberty under law:

Law is the treaty to which members of the same community have agreed, and under which the magistrate and the subject continue to enjoy their rights, and to maintain the peace of society (...) The laws of his particular society intitle him perhaps to a determinate station, and ... a certain share in the government of his country (...) Where the citizen is supposed to have rights of property and of station, and is protected in the exercise of them, he is said to be free; and the very restraints by which he is hindered from the commision of crimes, are a part of his liberty

Inside this frame, different countries had been "led to differ in the interpretation of the term", and in particular different opinions had been held on whether or to what extent "a new division of property" was needed "as the foundation of freedom". Ferguson himself being inclined, against Hume, to assume that laws favouring a greater degree of equality were both possible and desirable in a commercial society, "inspiring moderation ... and stifling the passions by which mankind are prompted to mutual wrongs".⁶⁹

While presenting a fairly detailed and in many ways conventional conjectural history of progressing stages from 'rude' or barbarian to 'civilised' society, Ferguson's comparison of the ancients and moderns was also more ambivalent than that of Hume. All things considered, there was no doubt that modern society with its material comforts, refinement, science, art, and civilised manners was a

67. Ferguson, *Essay*, I,2; I,6 (pp.20,36,39,41).

68. Ferguson, *Essay*, I,4; I,6-7; VI,4 (pp.28,39,41,47,245).

better place to be. Above all, while ancient republics had their spells of liberty, and while savage tribes had often no need for it, Ferguson agreed with his contemporaries that the legal institutions and the public order of the British in particular had reached "a point of perfection ... never before attained in the history of mankind". Yet his causal analysis differed, again, from that of Hume. First, he challenged the automatic equation of commerce (and luxury and art) with the development of cool and polite manners. Instead, he saw compassion, moderation, formality, and restraint in civil conduct as stemming from the norms of mediaeval chivalry and honour, blended with Christian teachings. Secondly, while recognising the importance of institutions which "combine to balance each other", so that the "public interest is ... secure ... because each, in his place, is determined to preserve his own", he also voiced strong scepticism about the claimed perfection of political institutions:

If national institutions, calculated for the preservation of liberty, instead of calling upon the citizen to act for himself, and to maintain his rights, should give a security, requiring, on his part, no personal attention or effort; this seeming perfection of government might weaken the bands of society, and, upon the maxims of independence, separate and estrange the different ranks it was meant to reconcile

Ferguson was willing to "congratulate our species on their having escaped from ... barbarous disorder and violence, into a state of domestic peace and regular policy", and certainly like his friend Hume lauded "as the keystone of civil liberty" the *habeas corpus* laws of Britain. But "it requires a fabric no less than the whole political constitution of Great Britain, a spirit no less than the refractory and turbulent zeal of this fortunate people, to secure its effects", indeed "the influence of laws ... in the preservation of liberty ... is, in reality, the influence of men resolved to be free".⁷⁰

Inside the overall framework of human progress from rudeness to civilisation, Ferguson would still stress, in republican fashion, that the life span of any one state was a contingent matter. Even if Polybian cyclical assumptions were uncalled for, there were still abundant reasons to speculate about "the grounds of inconstancy ... the sources of internal decay, and the ruinous corruptions" that still threatened, also "in the supposed condition of accomplished civility"⁷¹

Chief among the sources of corruption were, first "a discontinuance of the scenes in which the talents of men were hapily cultivated", and secondly "a change in the prevailing opinions relating to the constituents of honours or of happiness". Regarding scenes, Ferguson shared Smith's concern with "the separation of professions", fearing that "society is made to consist of parts, of which none is animated

69. Ferguson, *Essay*, I,6; III,6 (pp.38,150-52).

70. Ferguson, *Essay*, III,2; III,6; IV,3; V,4; VI,5 (pp.124,159-60,182,214,249,252).

with the spirit of society itself". Against Hume, he stressed the importance of political activity in republican party politics (or, in monarchies, in "courtly assemblies") where "men are obliged to court their fellow-citizens, and to employ parts and address", where they "find ... a school for discernment and penetration", and learn to think themselves "well placed in every company".⁷²

The danger of chaining popular political activity through institutional means was all the greater, because "the political spirit" and sentiments of patriotism required constant reminding and renewal. Although "desire of public safety, is ... a powerful motive of conduct ... it operates most, when combined with occasional passions, when provocations inflame".⁷³

Regarding *opinions*, the danger of corruption was constituted by the changing standards of personal merit that followed with inequalities of fortune. Not luxury, accumulated wealth, or social inequality *per se* was the problem, as its significance was anyway a historical and relative matter. However, if

the disparities of rank and fortune which are necessary to the pursuit or enjoyment of luxury, introduce false grounds of precedency and estimation; if, on the mere considerations of being rich or poor, one order of men are, in their own apprehension, elevated, another debased ... the one becoming mercenary and servile; the other imperious and arrogant ... the whole mass is corrupted⁷⁴

Ferguson's analysis was a sustained attempt to recast the emerging discourse of *commercial* civil society, using republican terms. In doing so, Ferguson made two moves. First, he would occasionally use civil society as a generic term for all the changing *types* of social and political organisation. In this sense, society was always 'civil', as humans had always lived together in groups, and different forms of social organisation, political 'superstructures' (another term invented by Ferguson), and dominant character traits evolved in different material circumstances.

However, secondly, he also insisted on paying attention to the original meaning of *civil* and *civilised* (and *polite/polished*) as denominating a manner of organising and conceptualising a society of *citizens* vis-à-vis the state. This was relevant in a modern age where, unlike in ancient times, it had become possible and necessary to make "a distinction between the state and its subjects", and to view society in a political aspect while yet recognising the historicity of both citizenship and virtue. Etymologically,

71. Ferguson, *Essay*, V,1 (p.199).

72. Ferguson, *Essay*, IV,3; V,3; VI,1 (pp.182,206-7,226).

73. Ferguson, *Essay*, V,2-3 (pp.200,210).

74. Ferguson, *Essay*, V,3 (p.237).

polished ... originally referred to the state of nations in respect to their laws and government [and men civilized were men practiced in the duty of citizens]. In its later applications, it refers no less to their proficiency in the liberal and mechanical arts, in literature, and in commerce [and men civilized are scholars, men of fashion and traders]⁷⁵

In retracing the meaning of 'polished' or 'civil', Ferguson might be seen as siding with the old conception, and with the ancients against the moderns. In reality his position was more complex. We saw that Hume took very seriously the republican problematique, yet believed that a new commercial society could be 'civil' in the sense that the sentiments and behaviour of the tradesman, the courtier, and the conspicuous consumer were conducive to securing a quality liberty fit for moderns. Ferguson, while denying this, was acutely aware of the beneficial effects of commercialism, and of the need to study the inevitable interplay between the various aspects of civil society in their relation to liberty. In Ferguson's vision, the very point of analysing the history of civil society was to consider the relationship, not just between the state and civil society, but between society and citizens in their 'economic' and their 'political' aspects, including the political consequences of the former.⁷⁶

In Ferguson's modern civil society,

[i]n the bustle of civil pursuits and occupations, men appear in a variety of lights, and suggest matter of inquiry and fancy, by which conversation is enlivened, and greatly enlarged. The productions of ingenuity are brought to the market; and men are willing to pay for whatever has a tendency to inform or amuse

But the "boasted refinements ... of the polished age, were not divested of danger". If they were combined with a policy "not merely to prevent injustice and error, but to prevent agitation and bustle", which "by the barriers they raise against the evil actions of men, would prevent them from acting at all", then dangerous corruption was in sight. Civility did entail a measure of docility and cooling, a state of "greater tranquillity". Thus, the "manners of rude nations require to be reformed. Their ... dissensions are the operations of extreme and sanguinary passions". Part of this reformation was the introduction of a stout and valiant attention to the rules and formality of public intercourse - which Ferguson did not associate with commer-

75. Ferguson, *Essay*, IV,4; V,1 (pp.190,195). The bracketed words are added in the 1768 edition of the *Essay*.

76. This ambition was different from Hegel's bifurcation of a realm of economic particularity and another realm (the state) of political universalism, each populated with different individuals (a bifurcation which was continued in Marx's analysis of capitalism and proletarian revolution out of). It is equally at odds with the new idea of civil society as a 'third' sphere, beyond both state and economy (e.g., Avineri 1968, 1972; Cohen & Arato 1992; Oz-Salzberger 1995:xix).

cialism as such. Another was the mildly agitated exchanges of opinion in the “debates that subsist among men of integrity”, quite far from “unanimity” which “is to be considered as a danger to liberty”, although “respect to ... laws, are the points in which mankind are bound to agree”.⁷⁷

We shall see that the ambiguity of modern civil society, as analysed by the author who invented the term for posterity, was also a theme of the American debate, although the full force of its republican dialectic of civic virtue and commerce was only fully articulated in the work of Tocqueville.

8. From Natural Law to American Republicanism: Reid and Paine

The American founders were well versed in authors like Locke, Sidney, Hume, Smith and Montesquieu. However, two additional authors, one Scottish, the other English, both of them susceptible to republican discourse, were prominent in America. The moral and natural jurisprudential works of one, Thomas Reid, influenced a generation of intellectuals of the founding period. Those of another, the widely circulated political pamphlets of Thomas Paine, popularised a democratic, rights-based argument for self-government on the eve of the revolution, in which Paine himself participated. A brief look at these authors, the direct influence of whom I do not attempt to trace, provides us with a further key to *how* natural law and natural rights discourse informed the first principles of the American revolution.

8.1. Reid

In our discussion of Locke, we emphasised that the association of eighteenth century natural law theory with doctrines of moral self-sufficiency, let alone with the advocacy of a ‘possessive individualism’ doctrine was a serious mistake. This is certainly true of Reid, and with him much of the early natural rights discourse in America. To Reid, the purpose of a human life, the reward for which was eternal happiness, was the performance for their own sakes of one’s duties, i.e., duties to oneself (exercising the virtues of prudence, temperance, and fortitude), to God (proper worship), and to fellow men (the virtue of justice). Each was really a subset of the general duty to perform one’s *offices* as one was called to by the Almighty, that is, as a matter of natural law, apprehended by human reason. Rights and duties, by and large, were two sides of the same coin (as “wherever there is Duty and Obligation on one hand, there must be a corresponding Right perfect or imperfect on the other”), and Reid’s duties constituted a Christian jurisprudential language capable of integrating classical (Stoic) conceptions of virtue.⁷⁸

77. Ferguson, *Essay*, I,10; V,3,5; VI,5 (pp.63,208-9,219,252).

78. Reid, *Lectures and Papers on Practical Ethics* (p.193). See Haakonssen (1990; 1991), by whose reading I am inspired.

Reid's restatement of natural jurisprudence informed American conceptions in at least three important ways. First, Reid differed from Smith and Hume, not only in the departure from moral conventionalism and scepticism, but also in his conception of what rights and their corresponding duties might do. Rights were not merely for regulating a society characterised by scarcity and limited sympathy. Civil society, no doubt, had a prudential foundation in the general interest in security and welfare. But civil laws, because parts of "the human constitution point that way" also facilitated and encouraged man's moral development in a moral community, indeed provided the exercise of the "Love of ones Country".⁷⁹

This led Reid to believe that formal justice all but exhausted the actions individuals ought to perform. Against conventional distinctions between imperfect and perfect rights, where only the latter could be legally enforced, had moral priority, and were indispensable for society, Reid claimed that imperfect rights, which referred to legitimate claims on some positive action on behalf of others (i.e., charity), had equal moral force as an obligation, and could and ought to be legally enforced.⁸⁰ More importantly, and much more influential in writers like Jefferson, was the optimistic idea that the system of personal rights and duties, which was derived from natural law and manifested in free action, was in essential concordance with, indeed aimed to express the interests of, the commonwealth at large. Liberty and the common good were not in conflict. Reid's understanding of contract theory, which denied the possibility that historical origins (of property or social relations) had anything to do with legitimacy, enforced this belief. Consent, in his view, could be understood as an 'implied' moral acceptance and undertaking of the duties befitting a certain station or office.

Secondly, Reid strongly opposed Humean scepticism and advocated a doctrine of *common sense* which became immensely influential in America. The fundamentals of morality were self-evident, they did not "require deep or subtle reasoning to discover them". When appeals were made, in the new democratic world, by Jefferson, Paine, Madison, or various Anti-Federalists, to the 'rights of man', neither Humean scepticism nor Locke's agony about secure foundations of natural rights had any place.⁸¹

However, thirdly, not all rights were equally fundamental. Reid was also part of the origin of the American habit of distinguishing between more or less *inalienable* and more or less *natural* rights. Natural rights were the right to life, liberty, and the free use of reason and judgement. Certain rights were 'adventitious', presupposing human action, and chief among these were property rights. Most importantly, property rights were conceptualised as derivative from and instrumental towards the natural or innate rights. But Reid made a point about stressing that property

79. Reid, *Practical Ethics* (p.249).

80. Reid, *Practical Ethics* (p.198).

was a very circumscribed and contingent right, thus setting the scene for a political contestation, advocated by Jefferson in particular, of the proper shape of the *libertas* of specific historical communities. Man's right to property was not merely a right "to appropriate to his own use from the common Store what is necessary to his present Subsistence and comfort and hurts no other person". One of its main reasons was that it "put it in a mans Power to do good to others" and "promote the happiness of human Society". In general "private Property ought to yield to the publick Good when there is a repugnancy between them", and this, to Reid, could imply restrictions on entail and private monopolies. Also, very much contra Hume's conservative constitutionalism, restrictions on property might serve the legitimate - Harringtonian - *political* purpose of ensuring the stability of the republic and its constitution by the means of "Agrarian Laws or other Means of that kind".⁸²

8.2. Paine

Paine's contributions were equally significant. First, it was very much through his writings that the republican notion was spread of the rights of *a people* or a nation to self-government. Paine coupled traditional natural rights to a republican analysis of legitimate resistance to tyranny and slavery. By emphasising the collective, aggregate nature of the executive power of the law of nature in society, 'civil rights' very much became the right of a people to form its constitution. Thus, in *Common Sense* and *The Crisis*, arguing that a "government of our own is our natural right", Paine advocated a radical republican secessionism, which relied on the powerful rhetoric of resistance to "slavery upon earth". He appealed to the general unreasonableness of the rule of a single, unelected person, and to the need, in particular, for the Americans to throw off the yoke of the British monarchy which had abundantly demonstrated both its inability to protect the distant shores of its colonies and its unwillingness to sanction laws that did not favour Britain. The former colonies, by contrast, had demonstrated the economical and financial ability to assume their moral right to self-government. Hence the need to seize the day, "that peculiar time which never happens to a nation but once", avoid the danger of the "popular disquietudes" of "the desperate and the discontented" paving the way for some "desperate adventurer to try his fortune", in order to create a republican constitution in America, and establish between young and previously divided and quarrelling colonies a "concord [which] ... fixes a memorable era for posterity to glory in".⁸³

Secondly, a part of the emphasis on popular and national "sovereignty" also - in *The Rights of Man* which was written after both the American and the French revo-

81. Reid, *Practical Ethics* (p.192).

82. Reid, *Practical Ethics* (pp.205-8).

83. Paine, *Common Sense, Political Writings* (pp.28-29,35); *The Crisis, Political Writings* (p.41).

lutions (in 1991-92) - was associated with the right of *each living generation* to establish its own form of government. While Paine had no quarrel with affirming "a system of principles as universal as truth and the existence of man", he firmly believed that "that which a whole nation chooses to do, it has a right to do". We know that "circumstances of the world are continually changing, and the opinions of men change also; and ... government is for the living and not for the dead". Thus,

[o]ne of the greatest improvements that has been made for the perpetual security and progress of constitutional liberty is the provision which the new constitutions make for occasionally revising, altering, and amending them⁸⁴

To Paine, as to many American intellectuals, such beliefs accorded well with a wide spread *deism* which dismissed traditional biblical orthodoxy. God was now often seen as a benign but remote deity who had put people in the world with a purpose, endowing them with equal dignity and a capacity for reason, but had withdrawn without express command as to how to order human societies. Paine's political optimism and complacent Enlightenment belief in reason and human perfectibility competed with darker, Puritan views of man's fallen nature and moral complexity, but the result was essentially the same - that men were entrusted with much discretion in ordering their political affairs.

Thirdly, Paine - by his life's example no less than through his writing⁸⁵ - epitomised the levelling impulse of the American revolution. As we shall see, there were more and less conservative or democratic voices in the constitutional debate, also across the Federalist-Anti-Federalist divide. But even conservatives had to contend with views like those of Paine, as voiced against his intellectual arch enemy Edmund Burke, to the effect that *everybody* (or, at any rate, every white male) could know their own interests and govern themselves, and that they were equally endowed with a right to do so, because all "of *one degree*". Concretely, Paine represented the more general shift evident in American republican discourse away from the traditional advocacy of forms of mixed government, which now became associated with Britain ("an imperfect everything, cementing and soldering the discordant parts together by corruption, to act as a whole"), towards ideas of government strictly by the people. To Paine, the modern approximation of Athenian 'direct' democracy was a system of representative democracy which recognised no differences in the natural orders of men.⁸⁶

Fourthly, if Reid stressed the self-evident nature of morality, Paine believed that the ends of government were so obviously shared by all that their best and

84. Paine, *The Rights of Man*, parts I and II, *Political Writings* (pp.56-58,140-41,192).

85. See Keane (1995).

86. Paine, *The Rights of Man*, I (pp.77,138).

only guarantee was a politically active populace, attentive to their own good. Thus, "for a nation to love liberty, it is sufficient that she knows it; and to be free, it is sufficient that she wills it". What was needed was the love of country of determined citizens standing their ground in battle, inspired, unlike the "summer soldier and the sunshine patriot", by "so celestial an article as freedom". In times of peace, it was popular, representative government. The ends of such government consisted in "securing freedom and property to all men, and above all things the free exercise of religion, according to the dictates of conscience". Also, good government was limited government, "[i]t is but few general laws that civilised life requires ... all the great laws of society are laws of nature". Paine spoke for the independent artisan, trader, or immigrant free-holder, i.e., the self-made and self-reliant men in pursuit of the happiness which, in Paine's own experience, was provided for so abundantly in a socially open-textured new country such as America.

Although favourable, like all the Founders, to Adam Smith's invisible hand economics, Paine did not envisage a society of acquisitive individualism. Indeed, rather like Jefferson, he was too optimistic to perceive of any serious disjunctures between the individual pursuit of happiness and the common good (the "*RES-PUBLICA* or *PUBLIC BUSINESS*"). Paine had no premonitions about sinister majorities, as arising for instance over unequal relations of property. Acting collectively, he claimed, a "nation can have no interest in being wrong".⁸⁷

87. Paine, *Common Sense* (p.28); *The Crisis* (p.41); *The Rights of Man*, I and II (pp.59,157, 169,185).

CHAPTER 5: REPUBLICANISM AND AMERICAN DEMOCRACY

1. Introduction

The purpose of this chapter is to excavate and discuss republican arguments as they were formulated in the last great historical setting of republican thought, which was eighteenth century America. This setting, it should be noted at the outset, was dramatically different from any previous context of republican discourse. Several historical components contributed to the distinct flavour of American political thought.

First of all, the socio-economic situation of the colonies, with their large numbers of freeholders and absent feudal structures, had created a social levelling which was unprecedented in the Old World. Americans had come to see themselves as fundamentally equal in their predicament as oppressed subjects of the British crown. The War of Independence created a revolutionary democratic ideology, based on doctrines of natural rights and just resistance against tyranny, which became enshrined in the various state constitutions which were created in 1776-77 under the umbrella of the Confederation. In terms of civil and political rights, and (apart from the status of black slaves, Indians, and women) in terms of inclusiveness and equality of citizenship, America's was the first really *democratic* republicanism.

Moreover, while many state constitutions were fashioned after versions of the old doctrine of mixed or balanced government, it soon became difficult to justify second chambers with reference to distinct social interests, competences, or Machiavellian *umori*. Instead, they and other political forms became seen as so many instruments of a republican government which was by and for the whole people, but which, for practical reasons, had to employ devices of representation. Before, either democracy had denoted an aspect of a republican government or it had been a derogatory term of its degeneration. Now all political arguments had to be justified in terms of the rights, interests, and sovereignty of an undivided *popolo*. Also more conservative writers, to whom the democratic spirit constituted a threat more than a promise, had to couch their reservations about direct popular forms in these normative terms.¹

The content of liberty and rights which the young American people came to see as their birth right was considerably shaped by the colonial experience. Liberty above all was the personal, self-sufficient *independence* of the individual, particularly against the tyranny of unjust taxation, undeserved aristocratic privilege, and arbitrary, unaccountable rule. Secondly, because of the great many immigrants

1. Wood (1992:91-98).

arbitrary, unaccountable rule. Secondly, because of the great many immigrants who had fled from religious oppression in Europe, liberty was intimately associated with freedom of religion and toleration. Both aspects were originally conceptualised to require a *limited* government, consisting exactly of the mutually *delegated* functions and powers that were essential to secure liberty - or indeed, in radical Anti-Federalist versions, only such functions and powers which the people could exercise directly themselves. In both ways, American discourse soon became distinctly *national*, concerned with its own role as herald of good tidings and beacon of hope for the world. The American discourse, even more than previous ones, was a republicanism of *foundation* and *national consolidation*.

A third characteristic aspect of the American context was *size*. The vast territory and the colonial division into quite heterogeneous and even unconnected states could not but revive the old debate about smallness and homogeneity as a condition of republican liberty. American republican discourse was to centre around the question of the possibility of a national, *federal* consolidation, and whether, or to what extent, (new) republican forms of identification and virtue could be expected at this level. Also, as a new theoretical problem of size, typical of a democratic political culture, the discourse of republican liberty was connected to the difficulty of adequate representation of diverse legitimate interests. Possibly the greatest theme of the American debate became the tension between local liberty on the one hand and the dimensions of liberty which required federal consolidation on the other.

Our discussion of American thought traces the manner in which the new vocabulary of natural rights, balancing of interests, and commerce was given new republican interpretations on the American scene. In particular, we look at the famous debate between Anti-Federalist opponents to the new constitution and its Federalist defenders. Among the latter were voices (Paine and Jefferson) who are best described as democratic radicals. But the most distinctive figure was the more conservative Madison, who invented a new, sceptical-realist 'economy of virtue'. Madison's work consciously engaged with the republican tradition, it reformulated many of its themes in sophisticated ways, but it also made amendments and additions, and required new assumptions, that became the beginning of the eclipse of republicanism. Others, notably Hamilton, and to a lesser extent Adams, consciously departed from the republican tradition. Both of the latter figure less prominently in our account.

Before embarking on these matters, we need to consider again Pocock's influential view of the American debate, and some of the debate that it has provoked.

2. Pocock's America and the Critique of Humanist Revisionism

English republican discourse, according to Pocock, was mirrored in the anti-Hamiltonian debates of post-revolutionary America, about the dangers and corruption arising from a modernising commercial 'aristocracy' and the strong executive

government needed to support it. Again, *property* was not, in the dominant *commonwealth* thinkers - who included, in Pocock's view, "nearly all articulate Americans of the Revolutionary generation" - conceived in terms of a natural, Lockean right to acquisition, but rather as a guarantee of civil independence or, conversely, dependence and corruption. The great American heritage was not the liberalism of individual rights (or of possessive individualism), but the heroic and self-consciously backward-looking attempt to give a fresh start to a truly political way of life in active self-government, in defiance of European corruption. The American revolution was "the last great act of the Renaissance ... emerging from a line of thought which staked everything on the renovation of virtue". Nor was the Anti-Federalist defeat the beginning to the end. Even the political science of balancing interests in the tenth *Federalist* is seen by Pocock as a largely successful attempt to make sure that "interests do not corrupt", allowing the authors to employ republican rhetoric in the service of "an artifice no longer founded in virtue". The other main attempt to reconcile virtue and commerce, that of Jefferson, saw "the preservation of a yeoman commonwealth as the secret of virtue's maintenance", even as he accepted the need for commerce as "independence through exchange relations", exemplified in the ideal of the small entrepreneur. Indeed "an expanding agrarian society [could] absorb an expanding commerce". The Machiavellian (or Pocockian) moment comes to rest in the myth of the frontier and in Jefferson's ultimate recognition that even America's capacity to supply the foundations of virtuous independence were not infinite. Yet, the language of virtue, according to Pocock, lives on rhetorically in American politics, in the periodically renewed denunciations of "venality in public officials, the growth of a military-industrial complex in government, other-directedness and one-dimensionality in individuals ... all ... continuous with those used in the classical analysis of corruption."²

2. Pocock (1975:522,533,548; 1985d:272-73). The key reference points of the early consensus on the liberalism of the American founding period are Louis Hartz (1955) and, for the radical interpretation, Charles Beard (1913). Before Pocock, the liberal interpretation was challenged by Bernard Bailyn (1967) and Gordon Wood (1969). But they did not, as is usually assumed, quite share Pocock's view. Wood, closest to Pocock's idea of civic humanism, saw the republican tradition as largely ending with the revolution. Bailyn, in his analysis of the numerous pre-Revolutionary pamphleteers, does not seem to find incompatibility between a republican language of virtue and corruption and the fact that they almost all "cited Locke on natural rights", and were concerned with liberty in the context of constitution and law, and the danger of central government power abuses on private citizens, "liberty being passive" (Bailyn 1967:27,74). Lance Banning, another important supporter of a republican reading of American history, highly influenced by, and a pupil of, Pocock, has retreated somewhat from his earlier position (Banning 1978; 1986). The literature on American republicanism is by now immense, useful summaries being Shalhope (1976 and 1982) and, more recently, Onuf (1989) and Rodgers (1992). For more general discussion and many references, see also Ackerman (1991:cpt. 1,2,7-9), Ball (1988:47-79,169-70), and Book III of Rahe (1992).

In the context of American political thought, Pocock's civic humanist history has met with much criticism. Isaac Kramnick, following in the footsteps of C.B. MacPherson, has convincingly, if somewhat one-sidedly, suggested the existence, from about 1760 onwards, of a politically important Lockean language of a new, disenfranchised and mobile, middle class of artisans and manufacturers, claiming rights of representation and careers open to talent. The claims were made in the name of ideals of economic industry and innovation, celebrating the just material rewards of the hardworking capitalist entrepreneur.³

Joyce Appleby notes how not only the possessive individualist theme, but also ideals of moral independence were transmitted into American liberalism, for instance in Jeffersonian transformations of Anti-Federalist classical republicanism. Appleby's American liberalism is a more recognisable set of doctrines than those of either Kramnick or Pocock. There is no reason, here, why individuals, pursuing their happiness in private or in the life of business, cannot also be independent and autonomous, all things which, in Pocock's vocabulary, are exclusively associated with the pursuit of civic virtue.⁴

Kramnick and Appleby have strong cases against Pocock. Writers depicted by Pocock as lamenting classical corruption were really often criticising impediments to progress; his classical men, steeped in the writings of the ancients, most often used these to cast light on a future they clearly perceived to be not only different, but better. Yet, both these authors stay within Pocock's terms which presuppose the existence of an inherited language of civic humanism, concerned with the conditions of a fully human life. This language is merely put in a less prominent place - in Kramnick less prominent than Appleby. Pocock's critics here basically claim that liberalism, as a capitalist ideology or, alternatively, a language of autonomy and moral progress, *was* able to offer something which more than outweighed the uncertain benefits of self-development, authenticity, and a life of self-government, which for various reasons had an increasingly anachronistic and nostalgic air about it. Pocock thought this transformation took place much later and much more ambiguously (from *virtue* to *manners*) but the *conceptual* concord is nevertheless striking between these three major commentators.

In dismissing Pocock's conception of virtue as manifestly anachronistic, and in focusing exclusively on the new liberal language of virtue, Kramnick and Appleby overlook the continuing existence of a discourse about forms of civic action and dispositions which are *necessary* for the republic, and not just worthy sentiments of a bygone age. We may better understand the point of this remaining language of civic virtue if we regard it as answers, not so much to what constitutes a fully hu-

3. Kramnick (1982; 1990).

4. Appleby (1992:324-27). This work by Appleby contains a number of essays challenging Pocock and other revisionists.

man life, as to what is necessary to preserve political orders, not for the sake of more virtue, but for the sake of liberty.

The works of Appleby and Kramnick, which offer valuable perspectives on aspects of the genesis of American intellectual history, are typical of an almost universal flaw in the literature on the founding period, and particularly the debate over the respective place of 'republicanism' (or 'civic humanism') and 'liberalism'. On the one hand, it is relatively easy to establish that the first principles of the American founding, without any exceptions at all, were about natural, individual rights, private liberty and security, and never about the value *in itself* of a virtuous life of political participation. The following pages establish this, I believe, beyond doubt. On the other hand, the many commentators who focus on the language of natural rights, contract, and state of nature theory *either* see this as evidence of early, victorious 'liberalism' (by which they mean many different things) which basically defeated the language of virtue, possibly relegating it to a minor Anti-Federalist fringe, or giving it non-political, individualist meanings.⁵ Or they recognise what is considered to be a transformed, *instrumental* language of virtue, domesticated and brought into the service of liberal values. The typical strategy here is to reserve a place for virtue in early liberalism, or less illuminatingly to speak of a radically different 'liberal' republicanism, which had a completely new normative content, and whose conception of the content and psychology of virtue was at any rate substantially changed. Most authors simply assume that Enlightenment authorities like Montesquieu and Constant were right that the political aspirations of the ancients were of a different order.⁶ Others combine their analysis with reconstruction of Greek and Renaissance thought which accept much of the civic humanist picture which has been constructed by the Pocock school.⁷

In congruence with the discussions of the previous chapters, the notion of the newness of 'instrumentalism' has to be rejected. Also, apart from the continuity of *libertas* as the object of virtue, towards the end of this chapter I suggest that, the many new ideological influences notwithstanding, the difference between 'classical' and 'modern' (American) virtue is exaggerated. This conclusion relates to one more basic problem of much of the literature. It seems to me that Pocock's dubious idea of independent discursive paradigms, complete with terms and universes of meaning which are mutually *incompatible*, is paralleled by many of his critics. These writers show, often convincingly, the existence of new meanings of old terms - *in casu* the republican terms of virtue and corruption. But too often it is assumed that new ideological elements, whether of Calvinist, or Enlightenment rationalist, or

5. E.g., Appleby (1992); Kramnick (1982; 1990); Dienstag (1996a); Diggins (1986).

6. E.g., Ackerman (1991:27-33); Ball (1988:47-56); Habermas (1994b); Sinopoli (1992:3-15, 146-55). Sinopoli's distinction between 'weak' and 'strong' republicanism is not helpful either.

7. E.g., Pangle (1988:48-72); Rahe (1992:3-54).

capitalist-entrepreneurial, or Scottish moral sense origin were islands to themselves in the discourse. It becomes possible to challenge these views once we use our theoretical searchlight, i.e., that republicanism was constituted by a specific *argument* whose rational core and common sensical persuasiveness allowed it to flourish in a diversity of ideological gardens.

3. Revolutionary Values:

"Life, Liberty, and the Pursuit of Happiness"

Contrary to the tradition of interpretation associated with such figures as J.G.A. Pocock and Gordon Wood, the first principles of the participants to the American founding were really much the same. Although political struggles were also disputes over good concepts - words like 'virtue', 'patriot' and 'true' republicanism which all commentators from Paine to Hamilton had to employ - it is not true that liberty as a substantial term of value "acquired new meaning". Wood notes that the Anti-Federalists defended a "classical conception of politics" whose ideas of "mixed constitution and ... proportioned social hierarchy" entailed a conception of "a simple and harmonious system". We shall see that Wood certainly has a point in the sense that a break *does* occur, epitomised by Madison's writings but also visible in many Anti-Federalists, in the gradual change to more modern, pluralist conceptions of a complex society of competing social interests and cultural diversity, and corresponding conceptions of political dangers. Many Americans had some difficulty understanding that the political will and conception of the common good of *all* the people would be in conflict with the rights of minorities. But Wood's claim is simply incorrect, if it is taken to imply that society was seen as a homogeneous whole or "organic chain", to which individual interests were to be sacrificed, or that by liberty they meant "public of political liberty, the right of the people to share in government" - as distinct from liberty in the sense of the "personal or private, the protection of rights against all governmental encroachments".⁸ Anti-Federalists were not all backward-looking yeomen of simple creeds (a number of them were slave owners); and the Federalists were not all members of a proto-capitalist oligarchy which eventually stole the American revolution. In the words of Storing, the disagreements between Federalists and Anti-Federalists, and inside these camps, "were not the deep cleavages of contending regimes", but

the much less sharp and clear-cut differences within the family, as it were, of men agreed that the purpose of government is the regulation and thereby the protection of individual rights and that the best

8. Ball (1988:55); Wood (1969: 608-9); cp. Sinopoli (1992:134).

instrument for this purpose is some form of limited, republican government⁹

To take a few, representative examples, according to one of the most able opponents of the constitution, *the Federal Farmer*,

There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed - a free and enlightened people, in forming this compact, will not resign all their rights to those who govern

And to *Agrippa*,

Civil liberty consists in the consciousness of that security [in their persons and property], and is best guarded by political liberty, which is the share that every citizen has in the government

To be sure, a main reasons for distrusting the outcome of the Philadelphia Convention was the danger that people of different states "be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them ... to live under one system of laws". But the *Federal Farmer* was not making a virtue of this fact, or making a 'civic humanist' call for states to be vehicles of distinct traditions of collective life of moral development. He was basically arguing the common-sensical point that, on account of the different interests, experiences and circumstances of the states, it could be argued "they can agree to no words by which ... to ascertain and establish many ... of these rights". But this did not prevent him or most other Anti-Federalists from eventually being chief champions of a bill of rights, or from arguing its indispensability on the grounds that, however much the financial, military, and judicial powers of the new federal state derived from the people, they did so in circumscribed manners and might grow to menacing proportions and constitute a real danger, not only to 'the people' - but to minorities of *individuals* of this people, including populations of states whose concerns were remote from the legislature in Washington with its "limited ... human capacities". In the words of *Agrippa*, "[i]t is ... as necessary to defend an individual against the majority in a republick as against the king in a monarchy". Differences certainly existed as to the type of activities that individual rights were perceived to be good for, and as to the degree of certainty with which they were perceived to be available and secure. But as we shall see, the really big differences were in the perceptions of the relevant locales and formats of liberty, and in how its enjoyment was facilitated and made to last in the first place.¹⁰

9. Storing (1981:5).

10. *The Federal Farmer* in Storing, *The Complete Anti-Federalist* (2.8.19-20); and *Agrippa* (4.6.30; 4.6.73). As all the Anti-Federalist pamphlets and speeches cited are contained in Storing's useful and authoritative collection, I shall identify them

Jefferson, the main representative of Enlightenment optimism in America, formulated a view which was quite typical, of liberty as a collective endeavour of a people securing certain individual liberties which were inscribed in the nature of things, in "conformity with the moral sense and reason of man". Thus,

[e]very man, and every body of men on earth, possesses the right of self-government. They receive it from the hand of nature. Individuals exercise it by their single will; collections of men by that of their majority¹¹

To Jefferson, America with its union had established an unprecedented political mutualism in the world, where "every man, at the call of the laws, would fly to the standard of the law, and would meet invasions of the public order as his own concern". Jefferson, like most of his contemporaries, saw America as "the world's best hope", the bearer of a "holy fire ... confided to us by the world". In the *Inauguration Address* as president of the new republic, he spoke to a majority when he outlined the liberty of "a happy and prosperous" people as constituted by the attainment of internal peace, rather than the divisions and strife between states, and by the happy separation and capacity for self-defence, *vis-à-vis* the political havoc of Europe. In a much similar vein, only emphasising that liberty was always both by, and from an 'energetic' state, Madison talked of securing the people "against external and internal danger" and providing "prompt and salutary execution of the laws ... as well as ... repose and confidence in the minds of the people". Jefferson also had in mind, for the entrenchment of a bill of right, the familiar republican "protection against standing armies" as well as "restriction against monopolies".¹²

What was the promise of such liberty? Like Paine, Jefferson advocated a limited government "which shall restrain [citizens] from injuring one another, which shall leave them free to regulate their pursuits of industry and improvement, and shall not take from the mouth of labour the bread [they have] earned". Apart from security in one's person under *habeas corpus* and trial by jury, security of possessions was a precondition for that pursuit of happiness which very much consisted in the legitimate enjoyment of the fruits of hard labour, the recognition of which reflected a common perception of European arbitrariness, inequality, and wastefulness. America was also to be a haven from religious persecution. Both Madison and Jef-

in the remainder of the chapter using Storing's system of reference. The first number in each bracket refers to the volume number.

11. Jefferson, Opinion on the Constitutionality of the Residence Bill, July 15, 1790; Opinion on the Treatises with France, April 28, 1790, *The Papers of Thomas Jefferson* (17:195 and 25:613).

12. Jefferson, Inauguration Address, March 4, 1801, *The Life and Selected Writings of Thomas Jefferson* (p.323); Jefferson to Rev. Samuel Know, February 12, 1810, *Life and Writings* (p.600); Jefferson to Madison, December 20, 1787, *Republic of Letters*, I (p.512); *Federalist* no. 36 (p.243). (Unless Hamilton's authorship is noted in brackets, all cited numbers of *The Federalist* are by Madison).

person worked tirelessly for the cause of toleration, Madison helping to pass a revised Bill for Religious Freedom (written by Jefferson) in the Virginia Assembly, after which he wrote to Jefferson that "I flatter myself have in this country extinguished for ever the ambitious hope of making laws for the human mind".¹³

Religious freedom and freedom of consciousness generally were valuable in themselves, conducive to public peace, and essential for the welfare of the persecuted coming to America from Europe. Along with freedom of speech and freedom of the press, they were also conducive to education, science and general enlightenment. Finally, Jefferson and Madison advocated education (Jefferson took pride in having founded the University of Virginia and spent much time and many private letters advising young people on the proper course of their education), the diffusion of books and newspapers, and public debate, for political reasons. Together they constituted that "bar of public reason" which was the best remedy against public "error of opinion". To Madison, "[p]ublic opinion ... sets bounds to every government, and is the real sovereign in every free one".¹⁴ Even Hamilton granted that "[a]ll governments ... depend, in a great degree, on opinion", nothing that "the laws which control the community receive their tone and spirit from the public wishes". America was fortunate that the "minds of the people are exceedingly enlightened and refined".

Rights to enjoy a fulfilling private life, to Jefferson, came with corresponding duties, and not only to observe the "written law". A "tour of duty, in whatever line he can be most useful to his country, is due from every individual". The highest duty of a citizen was "of saving our country when in danger". However, public duty was strictly circumscribed. Always personally relieved at the close of a period of political service, which he found to be "inseparably linked together" with "private misery", Jefferson thought that although "we are made in some degree for others, yet, in a greater, are we made for ourselves," and

it were contrary to feeling, and indeed ridiculous to suppose that a man had less rights in himself than those of his neighbours, or indeed all of them put together. This would be slavery ... Nothing could so completely divest us of that liberty as the establishment of the opinion, that the State has a perpetual right to the services of all its members¹⁵

13. Jefferson, Inauguration Address, March 4, 1801, *Life and Writings* (p.323); Madison to Jefferson, January 22, 1786, *Republic of Letters*, I (p.323).

14. Jefferson, Inauguration Address, March 4, 1801, *Life and Writings* (pp.322-24); Madison, in National Gazette, December 19, 1791, *The Papers of James Madison* (14:161); Hamilton, Speech to the New York Ratifying Convention, June 21, 1788, *The Papers of Alexander Hamilton* (5:36).

15. Jefferson to Colonel James Monroe, May 20, 1782, *Papers* (6:184); Jefferson to Madison, June 9, 1793, *Republic of Letters*, II (p.780); and Jefferson to J.B. Colvin, September 20, 1810, *Life and Writings* (p.606).

Charles Beard in 1913 offered an influential 'economic', i.e., Marxist and possessive individualist interpretation of the intent of the framers.¹⁶ Beard's presentation of the Federalists as an American *thermidor* was anachronistic already by ascribing a rising, progressive and levelling impulse to the Anti-Federalists. There was, in this sense at least, no stolen revolution. This, incidentally,¹⁷ explains that the authors of the *Federalist Papers* had no particular need to disguise their concern with property rights, i.e., the smoking gun of *Federalist* no. 10. Still, some founders had more conservative views concerning property than others. The inappropriateness of a Beardian reading is clear in the case of Jefferson. Apart from his general taste for rural simplicity of manners as conducive to moral maturity, good character, and particularly to patriotic spirit, Jefferson had further reasons to consider economic inequality problematic. In a famous letter to Madison, written while an ambassador to France, Jefferson commended on the waste of human resources and the "numberless instances of wretchedness" arising from the conservative property laws of old European monarchies. While "conscious that an unequal division of property is impracticable", Jefferson thought that "legislators cannot invent too many devices for subdividing property". In particular, heavily progressive taxation struck him as more in accordance with natural law.¹⁸

No such sentiments were shared by Jefferson's chief antagonist, Hamilton. The latter's professed republican "regard for those liberties, in defence of which the people have fought" was coupled to an almost Caesarean distrust of the "turbulent and changing" people. His reasons for championing the causes of independence and federal union were primarily linked to national economic modernisation, i.e., the development of trade and industry with the instrument of a strong central government. His aristocratic sentiments were shared by Adams, according to whom the rich "have as clear and as sacred a right to their large property, as others to theirs which is smaller", and that disturbing this order of affairs, as a purely democratic government would certainly do, would create an anarchy where nobody's rights were safe. Thus, "the rich ... ought to have an effectual barrier in the constitution against being robbed, plundered, or murdered".¹⁹

Hamilton's co-author of the *Federalist Papers*, Madison, was certainly less radical than Jefferson, and notoriously afraid that the "landed interests" (not Jefferson's small freeholder) and the propertied classes generally would be overwhelmed in elections by the advocates of "levelling schemes". However, although far more

16. Beard (1913).

17. See Ackerman (1991:219-21).

18. Jefferson to Madison, October 28, 1785, *Republic of Letters*, I (p.390).

19. Hamilton, Speech to the Philadelphia Constitutional Convention, June 18, 1787; Speech to the New York Ratifying Convention, June 21, 1788, *Papers* (4:200, 5:44); Adams, *A Defense of the Constitution of Government of the United States of America*, Vol. III, Letter 6, Fifth Argument (p.294).

attentive than Jefferson to the beneficial effects of some inequality of property and the blessings of commercial capitalism. Madison's work hardly calls for Beardian interpretations. Madison appreciated Hume's *political* arguments for stable relations of property and held certain conservative views about the superior political wisdom and moderation of the propertied segments of 'the people'. But this was only part of the picture. Liberty was also liberty from the abuses of property, and he granted that "there are various ways in which the rich may oppress the poor; in which property may oppress liberty". Moreover, although Madison perceived the chief danger to the republic to consist in tyrannical majorities, it was certainly not only the security of property rights against the levelling mob that he had in mind in his famous analysis of factions, a point to which we return below. Madison's reasons for not advocating a Bill of Rights at the time of the Convention were tactical and linked to his theory of political pluralism; he certainly shared the objectives of the Bill's many advocates.²⁰

4. American Conceptions of Republican Self-Government

What was the status of the *Libertas* instituted by the Americans? As noted, their Lockean vocabulary is difficult to ignore. However, once we abandon civic humanist readings, the scholarly demonstration of contract and state of nature theory in writers like Jefferson, Madison, or Adams hardly constitutes a formidable challenge to republican interpretations of the founding.²¹ Nor does the identification of a tension between a 'republican' language of ancient or well-established historical rights of a national community or a locality, and on the other hand 'liberal' natural rights. Rights language could of course be put to many uses, and the appeal to a golden past (e.g., hard-won rights to self-government in the states), or to individual or local group aspirations or interests that were perceived to be legitimate (e.g., 'rights' of slave owners) were some of them. Yet, the bottom line is that Federalists and Anti-

20. Madison, Speech to the Philadelphia Constitutional Convention, 1787, Note to Speech of the Right of Suffrage, ca. 1821, *The Complete Madison* (pp.37,45). See also Koch (1966:27-32). It is worth noting that, by 'property', apart from its "particular application", Madison had in mind something broader. Thus,

its larger and juster meaning ... embraces every thing to which a man may attach a value and have a right; and *which leaves every one else the like advantage*. (...) In [this] sense, a man has property in his opinions and the free communication of them. He has a property in his religious opinions, and in the profession and practice dictated by them. He has property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties ... In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights (Madison, in *National Gazette*, March 27, 1792, *Papers* (14:266-68)).

21. Although articles making such relatively obvious points continue to appear, e.g., Dienstag (1996b).

Federalists alike, of various stripes, were largely in accordance in their use of a moral language which emphasised that (white, male) man had been endowed by his creator with a basic human dignity, capacity for reason, and equality of worth, was entitled to direct his own affairs, and that *American* man enjoyed his abode in *the* place where this promise would be realised. However, as this natural rights language became the universal language of justification, it was fitted to a republican frame of political self-government, which distinctly stressed that men, born free and equal, must live in society, and that this carried important moral as well as political consequences.

Some general features, foreshadowed in the discussion of Reid and Paine, characterised this framing. Firstly, in all writers - even in those like Hamilton who merely paid occasional lip service - emphasis was placed on political rights and the pooled exercise of each man's executive law of nature as the collective self-defence of a people against power.

A second feature concerned the very meaning of rights. We noted that 'liberal' rights foundationalism of either libertarian self-ownership or radical moral self-direction was a late product, rather than the original point, of the natural rights language of the eighteenth century. The rights declared by the Americans were still seen as instrumental towards the widely shared value ideal of an intentionally moral Christian life of duty towards one's fellows, in reasonable personal security, and with due enjoyment of secular happiness. As life, liberty and some form of freedom of consciousness (the latter often of a more circumscribed nature than favoured by Jefferson and Madison) were regarded as a first precondition for such a life, it was equally 'self-evident' that certain material means for the pursuit of happiness were required. The important point is that 'rights' were *both* timeless expressions of the equal dignity and divine purpose of man, *and* the established political currency of temporally and territorially bound legal requirements towards these ends. In their later sense, they did not derive from abstract philosophical deduction, but from the good sense and concrete collective needs expressed by the people that were to be regulated by them. And opinions of the conditions and difficulties of such popular expression differed.

Thirdly, and closely related, the act of *consent*, in the early American tradition, came to have a rather more active flavour than in Locke. It was more than a matter of electing, tacitly accepting, or rightfully resisting an entrusted governor. Consent implied a constructive relationship of political will where the people in its entirety helped shape the indeterminate historical form of the political community, and with it their own liberty, binding themselves collectively in a mutual covenant for the future. 'Rights' and the will of the people, expressing their rational view of the common good, were not in principle seen to be in conflict - although conceptualisations of how to gain access to the people at its best varied greatly, marking points

of divergence in debates over the proper modes and levels of self-government. Three main positions - of the Anti-Federalists, of Jefferson, and of Madison - stand out.

4.1. Anti-Federalist Localism

The Anti-Federalists, in all their diversity, tended to assume that the self-government - rights nexus required a small republic. A number of reasons were advanced for the virtues of smallness, all to be discussed below. The main point in the present context is the emphasis on the danger of centralised legislation being unable to reflect the peculiar situation of each state. Listen again to *Agrippa*, the spokesman of a federal Bill of Rights, cited above. The "object of every just government is to render the people happy, by securing their persons and possessions from wrong". However, for this purpose

there should be local laws and institutions; for a people inhabiting various climates will unavoidably have local habits and different modes of life, and these must be consulted ... The idle and dissolute inhabitants of the south, require a different regimen from the sober and active people of the north [*Agrippa* was from Massachusetts]. Hence ... the necessity of local governments, who may enact, repeal, or alter regulations as the circumstances ... require (...) It becomes still more needful when the local manners are formed, and usages sanctified by the practices of a century and a half. In such a case, to attempt to reduce all to one standard, is absurd in itself, and cannot be done but upon the principle of power

Not only climate and manners, but also "unequal distribution of property, the toleration of slavery, the ignorance and poverty of the lower classes" marked a contrast between the South and, on the other hand "the care that is taken of education", preserving "small and nearly equal estates, equality of rights", and even "religion and good morals". It was "plain, therefore, that we require for our regulation laws, which will not suit the circumstances of our southern brethren, and the laws made for them would not apply to us".²²

Much of *Agrippa's* argument concerned the fact of complexity in the economic infrastructures of the states and the potential arbitrariness of federal laws in such areas as taxation, property and contract relations, the regulation of commerce and customs, and the central administration of courts. In the quoted passages, we recognise, secondly, a Montesquieu-inspired point about different geographical 'fits' between climate, *moers*, institutions, and laws, best conducive to liberty, where the author seems to accept that the fruits of liberty may include a great variety of substantial ways of life. Thirdly, beneath the rhetoric, he also expresses a localist fear that the good republican forms of Massachusetts (economic equality, virtue based on religion and education, industry etc.) will be destroyed by alien laws, aimed at

the administration of lesser (Southern) souls. It is this fear, finally, which takes Agrippa down a nativist path, reserving a state right to regulate immigration "to keep their blood pure ... from the foreign mixtures".²³

Other Anti-Federalists voiced similar fears. *The Federal Farmer* concluded that "one government and general legislation alone, never can extend equal benefits to all parts of the United States" on account of different "laws, customs, and opinions". A New York commentator, *Cato* noted "the variety of ... climates, productions, and commerce, the difference of extent, and numbers of inhabitants ... the dissimilitude of interests, morals, and policies", as reasons why the great goals of "*general welfare, and ... blessings of liberty to you and your prosperity*" could not be furthered by a federal union.²⁴

Anti-Federalists were somewhat more provincial or even parochial than most Federalists, particularly philosophical types like Jefferson and Madison, and sceptical of cosmopolitan calls to transcend what Madison called the 'spirit of locality'. But, again, their case for self-government was not an expressivist, proto-communitarian impulse as claimed by some.²⁵ On the one hand they did insist on certain local differences as to what, more specifically, the laws of liberty and security of property and person were eventually for. Occasionally, they spoke of cultural matters and local tastes - forms of life and valued virtues that were potentially threatened by central government and laws with a too general scope. More often, their localism had a more mundane content, about geographically conditioned needs, conditions of trade, the execution of justice, or the forms of taxation. But secondly, when religious virtue, ethnic homogeneity, or local customs were on the agenda, these matters were almost always also, and primarily, linked to the type of instrumental arguments which abound in the republican tradition, above all in Rousseau and Montesquieu. The point which was pressed against the Federalists was that each state was likely to know the conditions of its liberty best, and for this reason it ought to be able to regulate and re-regulate the legal forms expressing these conditions in a decentralised manner. We return to this point below.

4.2. 'The Earth Belongs to the Living'. The Jefferson-Madison Debate

Jefferson's view was expressed in his famous argument that "*the earth belongs in usufruct to the living*" which he (with Thomas Paine)²⁶ developed in France. Here, Jefferson linked the American idea of self-evident natural rights with a strong case

22. Agrippa, (4.6.48)

23. Agrippa, (4.6.34); cp. *Cato* (2.6.18).

24. *The Federal Farmer* (2.8.14); *Cato* (2.6.12, italics in original).

25. E.g., Kramnick (1987:54-61).

for periodic constitutional debates and resettlement. The earth, according to Jefferson, was given by God to each living generation for the good use of all individuals, seeking their happiness and performing their duties to others, in freedom and security. But God did not determine the details of temporal legislation which were most fit to further these goals. Such matters were left to human self-government. The idea found a particular as well as a more general expressions in Jefferson.

Firstly, there was no *natural* right to property, only civil or historical rights of given societies. Thus, the meaning of Jefferson's famous words that all men, apart from "Life" and "Liberty", are endowed with an unalienable right to "the pursuit of Happiness".²⁷ By not using the word property, as was often done, Jefferson stressed the historicity of all particular legal forms of the right of individuals to have a share of the Earth on which to labour, or some equivalent assurance of the primary means of subsistence. He also implied the possibility of employing higher order natural law requirements to censure particular laws of property, taxation, or entail, and even the possibility for states to incur debts, all laws which were to be seen as "municipal only, not moral; flowing from the will of the society, which have found it convenient". The general principle that the earth belongs to the living was "of very extensive application and consequences", enabling the abolition of all sorts of appropriations of land, established privileges, and monopolies. It made it possible for Jefferson to state that,

[w]henver there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right²⁸

Secondly, Jefferson claimed that each living generation possessed a right to choose and revise its constitutions and laws in their entirety. Thus, "by the law of nature, one generation is to another as one independent nation to another", and

no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please. But persons and property make the sum of the objects of government. The constitution and the laws of their

26. See Koch (1950:81-88) on the origin of Paine's use of what seems to have been Jefferson's idea.

27. *The Declaration of Independence* as adopted by Congress, Jefferson, *Papers*, I (p.429).

28. Jefferson to Madison, October 28, 1785 and September 6, 1789, *Republic of Letters*, I, (pp.390,632-34).

predecessors extinguished them, in their natural course, with those who gave them being²⁹

Unlike Jefferson, who viewed American events from the distance (also philosophically), as ambassador to revolutionary France, Madison was in the midst of a very real struggle to reach a working consensus on a new political order. He responded to the bold suggestions of his friend with some care. Without denying that Jefferson had an important point in *theory*, i.e., that the legitimacy of particular constitutional forms derived from the will of the people, Madison was in no mood to contemplate periodic constitutional revisions. He made several devastating comments. If governments depended "on some positive and authentic intervention of the society itself", they would be likely to suffer "the casualty and consequences of an actual interregnum". Invoking a Humean argument about habit and authority, he asked if not

a Government so often revised [would] become too mutable to retain those prejudices in its favour which antiquity inspires, and which are perhaps a salutary aid to the most rational Government in the most enlightened age

Under such condition, Madison further argued, one would see "pernicious factions that might not otherwise come into existence", in particular inevitable struggles arising over the definition of positive property legislation. More theoretically, Madison noted that Jefferson's position failed to make sense of obligations of sons that followed from the sacrifices of their fathers - in *casu* war debts incurred by the revolutionary generation for the benefit of posterity.³⁰

Lest one were to suffer these several practical "embarrassments" or even give up entirely the possibility of civil society, Madison argued, it must be accepted that covenants expressing the will of the majority might take the form of tacit assent "and that this assent may be inferred where no positive dissent appears". Indeed, although Madison certainly held political rights to derive from man's equal natural stature, he denied that the natural law argument could be employed to justify a particular mode of self-government, let alone the ingenious scheme calculated by Jefferson, according to which a new constitution had to be instituted after the passing of a nineteen year period, when a new majority 'generation' would have come into being. A strict state of nature argument with express assent would imply that no newcomers to society could "be bound by acts of the Majority". Thus either new (unanimous) votes on every single law, or express assent to rule by majority would be required whenever a single new member was added to the community.

29. Jefferson to Madison, September 6, 1789, *Republic of Letters*, I (p.634).

30. Madison to Jefferson, February 4, 1790, *Republic of Letters*, I (pp.650-51).

Against Jefferson, Madison argued that the republican argument about majority government concerned a "compact founded on expediency", not natural law.³¹

Behind these points a more fundamental difference divided the two. Jefferson's optimistic beliefs in universal progress and popular enlightenment led him to think that democratic will formation and discernment of the common good by *the people* - including as large and diverse a people as that of the United States - was a fairly straight forward matter. It becomes evident, as we turn our attention towards those of *The Federalist Papers* which were authored by Madison, why he did not share these views. The manner in which he conceptualised what he and the other founders were doing, and what was the difficulty in doing it, amounts to a theory of constitutional deliberation which was profoundly different - and not *only* more conservative - than the optimistic versions of Paine and Jefferson, yet still with distinctly republican features. Several aspects of this theory may be discerned.

4.3. Constitutional Foundation. Madison

Madison *did* agree with Paine and Jefferson at the most general level. Natural law, in his view, only dictated the most fundamental rights to liberty, security of person, freedom of consciousness and property in a share of the earth, i.e., "that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him". He opposed "*unnecessary opportunities ... to increase the inequality of property, by an immoderate, and especially unmerited, accumulation of riches*" and lauded that "silent operation of laws, which ... reduce extreme wealth towards a state of mediocrity, and raise extreme indigence towards a state of comfort". Madison probably considered "sacred" more extensive forms of property than Jefferson, and used a language of 'justice' to censure not only "excessive taxes [which] grind the faces of the poor", but also "arbitrary taxes [which] invade the domestic sanctuaries of the rich". But his views on property were primarily Humean ones, about the political desirability of stable legal forms and expectations, and prudential ones, about effects on commerce and economic development.³² However, in the context of constitutional foundation and deliberation, Madison's chief concern was with the design of institutions and mechanisms of government. He agreed with Jefferson and Paine that it was impossible to found for all posterity and, like these two authors, continually stressed "transcendent and precious" right of the people to install, change, or alter their government. But, again, Madison's appeal to the authority of "We the People" took a decisively different form.³³

31. Madison to Jefferson, February 4, 1790, *Republic of Letters*, I (pp.652-53).

32. Madison in *National Gazette*, January 23 and March 27, 1792, *Papers* (14:197-98,266-67).

33. *Federalist* no. 40 (p.264). Also no. 43 (p.285) and no. 51 (pp.321-22). See Rosen (1996).

Thus, in *The Federalist Papers*, Madison continually stressed the extraordinariness of the task of constitution-making, whose "novelty ... immediately strikes us". The articles of confederation had been demonstrated as fallacious, but in the cause of changing this "first foundation, and with it the superstructure resting upon it", all precedents "can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued". This being the case, Madison was acutely aware of the limited span of attention and resources of reason of the best of legislators, and the impossibility of foreseeing all the faults that practice and experience would demonstrate in the new institutions. Those who were to judge the outcome of the Philadelphia deliberations should "see the propriety of reflecting that a faultless plan was not to be expected", and recognise not only "the fallibility to which the convention, as a body of men were liable", but also "that they themselves are but men and ought not to assume an infallibility in rejudging the fallible opinions of others".³⁴

These difficulties of political prudence were compounded, as besides "the obscurity arising from the complexity of objects and the imperfection of human faculties, the medium through which the conceptions of men are conveyed to each other adds a fresh embarrassment". The science of politics, Madison pointed out, was simply of an altogether different order, where, as compared to the sciences of "works of nature", questions "daily occur in the course of practice which prove the obscurity which reigns in these subjects". The difficulties arising from the bluntness of any human language which was employed to express and realise the intentions of divine law concerned "indistinctness of the object, imperfection of the organ of perception, [and] inadequateness of the vehicle of ideas".³⁵

Finally, and most importantly, Madison emphasised that the task of foundation was difficult simply by virtue of the large numbers of different points of view that needed to be accommodated, each of them advancing a different conception of the common good of the new union, and each of them unwilling to sacrifice their own precious interests. Madison's pluralism and theory of countervailing factions, discussed in the following section, should not, however, be taken as evidence of a Hobbesian or Humean idea of human nature where interests and passions were essentially or largely unchanging, and where the science of government was exclusively a matter of challenging or checking impulses of rational egoism.³⁶ Madison presumed the possibility, in principle, of both capacity and willingness to impartiality, in enlightened rulers and less enlightened, ordinary people alike. This is evident in the sincerity of his appeals to the sound judgement of the people who were to adjudicate the new constitution ("the impartial world, ... the friends of mankind,

34. *Federalist* no. 37 (cp. *Federalist* no. 14).

35. *Federalist* no. 37 (pp.244-45).

36. Diamond (1959). For opposing views, see Ackerman (1991:224-27) and Miller (1990).

... every virtuous citizen"). as well as in his recognition that "the convention ... enjoyed, in a very singular degree, an exemption from the pestilential influence of party animosities". But he considered this capacity to be scarce, fragile, and only likely to appear in sufficient quantities under certain circumstances. Moreover, in its exercise he assigned different roles to the elite and the mass of the people.³⁷

Madison's moving account of the circumstances and proceedings of the Convention, which also found its way into his letters to Jefferson, comprises a distinctly republican conception of political prudence, concerned with the particulars of government in an imperfect world, above all with the need for restraint and moderation. For each of the reasons noted, only second best solutions could be expected in constitutional politics. Towards the end of the central *Federalist* no. 37, Madison rhetorically asked whether

it would be wonderful [i.e., strange] if, under the pressure of all these difficulties, the convention should have been forced into some deviations from the artificial structure and regular symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution in his closet or in his imagination

On the contrary, granting that "a nation of philosophers is ... little to be expected", it was a "real wonder" that such a degree of unanimity and "conviction of the necessity of sacrificing private opinions and partial interests to the public good" had in fact been evidenced. But what, more specifically, were the circumstances of the process of constitution making which the Philadelphia events so happily exemplified?³⁸

A first point to note regards Madison's understanding of factions. His generic definition of faction in *Federalist* no. 10 was "a number of citizens, whether ... a majority or a minority, who are united and actuated by some common impulse of passion, or of interest". Factions could be adverse either "to the rights of other citizens or to the permanent and aggregate interests of the community". Madison poured scorn on those "[t]heoretic politicians, who have ... erroneously supposed that by reducing mankind to perfect equality in their political rights, they would at the same time be perfectly equalised and assimilated in their possessions, their opinions, and their passions".³⁹

There were several reasons why this would never happen, all having to do with the types and natures of faction that Madison perceived in America. Madison usually contrasted 'interest' with 'passion'. Factions of interest included the basic opposition, based on differences in the faculties of acquisition, between "[t]hose who hold and those who are without property". Secondly, they sprang from the "various

37. *Federalist*, no. 37 (p.247); no. 40 (p.265).

38. *Federalist* no. 37 (pp.246-47); no. 49 (p.314).

39. *Federalist* no. 10 (pp.123,126).

and interfering" positions of a "landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, [and] many lesser interests". Both types of differences arose naturally by the "diversity in the faculties of men" and the growth of "civilized nations" respectively. A third localised kind of faction arose from the fact that "the United States are distinguished from each other by a variety of interests", which "give birth to contending interests and local jealousies".⁴⁰

Factions of passion also came in several varieties. Thus, reasons for individuals to "oppress each other" included a

zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions

Madison's terms were not altogether consistent. For instance, economic interests occasionally operated like passions. And passions clearly might be more or less closely related to either considered 'opinions' or more irrational sentiments. Yet, looked at a bit more closely, Madison's terms make sense:⁴¹

Thus, economic interests could take the form of dangerous disruptions. Jealous (unpropertied) majorities could be seized by a "rage for paper money, for an abolition of debts, [or] for an equal division of property", all of them "improper or wicked projects". But Madison also had in mind the narrow and sinister interests of (propertied) minorities, bent on gains of the moment, and willing to disregard "the rights of another or the good of the whole", for instance by using a monopoly position. Such *passionate*, dangerous interests, however, could be partly tamed by reason. Certain unjust interests were "secret wishes" which could not bear to see the light of day; others were narrow "local prejudices". But Madison also spoke of "true interests" of the whole, which were also those of one's own group when taking a larger view. They constituted "the mild voice of reason, pleading the cause of an *enlarged and permanent interest*", a voice which, unfortunately, was often drowned "by the clamours of an impatient avidity for immediate and immoderate gain". Apart from this, economic differences, between localities, classes, and occupational groups, but of a cooler and rational kind, continued to constitute more permanent, calculable, or 'structural' interests.⁴²

When Madison spoke of passions he could have in mind powerful allegiance to charismatic figures (which was unstable); or religious fanaticism (which was very dangerous); or the general fact that individual opinions because of human vanity ("self-love") and a universal tendency towards "mutual animosity" could degenerate

40. *Federalist* no. 10 (p.124); no. 38 (p.246).

41. *Federalist* no. 10 (p.124); Ackerman (1991:187-88); Miller (1990:36-37).

42. *Federalist* no. 10 (pp.125,128); no. 42 (p.276, italics added).

into stubbornness and fanaticism. However, "opinions and ... passions will have a reciprocal influence on each other", and while often "the former will be objects" of "the latter", opinions and (religious) prejudices could be enlightened. Indeed, it ought to be "the reason, alone, of the public, that ought to control and regulate the government". Yet, although opinion could thus be freed from passion in principle, and individuals be brought to consider the merits of other points of view, "[a]s long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed". This ineradicable pluralism, moreover, was welcomed by Madison.⁴³

Below, we shall see that Madison's famous science of countervailing passions and interests, while extremely important, was only part of his understanding of politics. Unlike Hume (and unlike Hume's less critical pupil in America, Hamilton), he combined it with an account of interest *transcendence* through representation. Still, by and large, Madison did not expect impartiality and civic virtue to carry much weight in *everyday* politics. The case of constitutional foundation was different:

although this variety of interests ... may have a salutary influence on the administration of the government when formed, yet every one must be sensible of the contrary influence ... in the task of forming it⁴⁴

The point to note in this context is Madison's chastened combination, in a republican language whose flavour was Machiavellian, of calls for prudent impartiality *and* realistic assessments of the pluralism of opinions and interests that would remain even under the best of circumstances. If some views of the states were parochial, others stemmed from reasonable regard for peculiar geographical circumstances and needs. If slavery was patently sinful, it was equally evident that its abolition could not at the moment be made a condition of accession of the Southern states to the Union. And most obviously, different, yet sincerely held opinions continued to exist on countless details of constitutional means.⁴⁵ Given this context, we may appreciate some important aspects of Madison's views on constitutional deliberation.

First, the main currency of constitution making was the political prudence of moderation, a virtue conceptualised in a manner which was closer to Aristotle or even Machiavelli than to Hume.

It is a misfortune ... that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good

43. *Federalist* no. 10 (pp.123-24); cp. no. 50 (p.317); no. 49 (p.315).

44. *Federalist* no. 37 (p.246).

45. See, in particular *Federalist* no. 38 (pp.249-52) and Madison to Jefferson, October 24, 1787, *Republic of Letters*, I (p.503). Cp. *Federalist* no. 1 (Hamilton).

Moderation consisted in acknowledging the fallibility of oneself and others. It involved a willingness to "compromise" and to "sacrifice theoretical propriety to the force of extraneous circumstances" when necessary. It required avoiding one's "predisposition to censure". It necessitated the acceptance of a large degree of horse trading,⁴⁶ rather than insistence on unanimity on every single point. Above all, it was facilitated by the disposition to upgrade considerations of the common interest in having a union at all and, accordingly, to recognise "the necessity of sacrificing private opinions and partial interests to the public good", while despair at "seeing this necessity diminished by delays or by new experiments".⁴⁷

Secondly, Madison's version of the appeal to 'we the people' exhibited a dialectic of the few and the many. In Philadelphia, he wrote to his friend in Paris, in view of "the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle".⁴⁸ In the course of justifying the extra-legal acts of the Philadelphia convention, Madison also suggested where that rare 'spirit' of patriotic moderation came from. It arose from a sense of danger and crisis, from being entrusted with a world-historical task of service to the people, "by whose confidence they had been so peculiarly distinguished", and from the anticipation of pending popular judgement:

[T]he convention ... were deeply and unanimously impressed with the crisis, which had led their country ... to make so singular and solemn an experiment ... It could not be unknown to them that the hopes and expectations of the great body of citizens ... were turned with the keenest anxiety to the event of their deliberations. (...) They must have borne in mind that as the plan to be framed and proposed was to be submitted to *the people themselves*, the disappropriation of this supreme authority would destroy it forever⁴⁹

The task of political (re)foundation, while preceded by popular agitation or military struggle, had to be conducted by the few "since it is impossible for the people spontaneously and universally to move in concert towards their object". Indeed, "it is therefore essential that such changes be instituted by some *informal and unauthorized propositions*, made by some patriotic and respectable citizen or number of citizens". Citing with sympathy the ancient Greek experience, Madison even noted that entrusting the framing of a constitution to a single legislator like Lycurgus or

46. Rosen (1996:564).

47. *Federalist* no. 37 (pp.242-47).

48. Madison to Jefferson, October 24, 1787, *Republic of Letters*, III (p.496).

49. *Federalist* no. 40 (p.264).

Solon was a way to avoid the "discord and disunion among a number of counselors".⁵⁰

Madison's views on the legitimisation of government through public opinion placed him between Jefferson and Hume. In contrast to Hume, Madison held a mainstream American republican view that "the people cannot wilfully betray their own interests", and that "the cool and deliberate sense of the community ... actually will, in all free governments, ultimately prevail". But, he also, unlike Jefferson, believed that "there are particular moments ... when the people ... may call for measures which they themselves will afterwards ... lament and condemn". In stating that "Governments rest on opinion", Madison steered a middle course. With due attention to Hume, he noted that the "reason of man is timid and cautious when left alone". It only acquired strength when associated with many who shared the same opinion, and when the "examples which fortify opinion are *ancient* as well as *numerous*". On the other hand, Madison knew that he lived in an age of popular revolution where "every votary of freedom [must] rest ... political experiments on the capacity of mankind for self-government", and that "no other form would be reconcilable with the genius of the people of America". Despite their propensity to passion and error of judgement in the short run and regarding particulars, the American people were capable of knowing that their most basic interests were jeopardised by the uncertainties of the confederacy. In times of crisis, "the vigilant and manly spirit which actuates the people of America" could and had to be relied upon, and Madison lauded "the virtue and intelligence of the people" which had "attended the revision of our established forms of government".⁵¹

This is connected to the last feature of Madison's constitutionalism, its dialectic of revolutionary foundation and temporal duration. The rise of the revolutionary spirit of democratic equality in America made it necessary for Madison's new republicanism to derive political authority and legitimacy from the people *in toto*. But it also made him stress the fragile and transient nature of popular mobilisations which might "stifle ... the ordinary diversity of opinions on great national questions", and economise with the people's capacity to self-education. Clearly, "a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions". By this he had in mind "the great principle of self-preservation; ... the transcendent law of nature and of nature's God", according to which "the safety and happiness of society are the objects at which all political institutions aim". These great "objects", however, were only rarely on the political agenda.⁵²

In his resistance to constant changes, Madison not only had in mind familiar conservative point of the popular "veneration which time bestows on everything".

50. *Federalist* no. 38 (p.248); no. 40 (p.264).

51. *Federalist* no. 39 (p.254); no. 49 (p.314); no. 57 (p.345); no. 63 (pp.371-72).

He made a much more general republican point about the contingency and fragility of new political orders - because of the limitations of knowledge, impartiality, and patriotic spirit, and the caprice of all things political in general, in the ordinary people and its leaders alike. Disappointed himself with some of the results in Philadelphia, he was insisting, against Anti-Federalists who opposed the new constitution for shortcomings that were even more obvious in the Articles of Confederation, that *any* constitution would be flawed, indeed that marshalling support even for a tolerable second best, under the circumstances, was close to a miracle, and that *this* fact bestowed a distinct value and authoritative kind of legitimacy on a *durable* constitution.⁵³

Thus, finally, the pathos of the American foundation, in Madison's vision, did not derive from Rousseau's unanimity, but from shared recognition of the great common interest in having a union of freedom at all, from establishing a concord of different states, resolving to remain together in times of great hardship, from inventing a new form of political community in the process, and from offering this example to the admiration of the world:

Hearken not to the unnatural voice which tells you that the people of America, knit together by so many cords of affection, can no longer ... continue the mutual guardians of their mutual happiness; can no longer be fellow-citizens (...) [T]he mingled blood which they have shed in defense of their sacred rights, consecrate their Union and excite horror at the idea of their becoming aliens, rivals, enemies (...) Is it not the glory of the people of America that ... they have have not suffered a blind veneration for antiquity ... to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit posterity will be indebted.⁵⁴

5. Formats of Liberty: The Federalist-Anti-Federalist Debate

There was, as I have shown, little difference of opinion on first principles around the time of the American revolution.⁵⁵ Nor did anyone seriously question the re-

52. *Federalist* no. 38 (p.248); no. 43 (p.285); no. 49 (pp.313-14).

53. *Federalist* no. 49 (p.313). Adams' views on political founding were related (Lerner 1979:34-36). Adams was (even) less satisfied with the contents of the new constitution than Madison. But despite his elitist leanings, he was somewhat closer to Jefferson in being less afraid of change *per se*, and more susceptible to treat politics as an evolving science. He believed that an adequately informed public, "who could conceive and ... adopt it [the constitution] we need not fear will be able to amend it, when by experience, its conveniences and imperfections shall be seen and felt" (Adams, cited from Appleby 1992:206).

54. *Federalist* no. 14 (p.144).

55. Of course, the rhetorics of the constitutional debate included the attribution of sinister motives to one's opponents. *Publius* often implied that Anti-Federalists

publican idea that the shift from rights of nature to tangible, secure, and elaborate rights in society was predicated on the self-government of the people, and that this nexus somehow had to remain. However, all the difference lay in the *somehow*. No one in the founding generation could ignore the experience of successful revolutionary resistance against the British crown, nor the accompanying, powerful rhetoric of a new, radically levelling popular sovereignty. Yet different figures disagreed profoundly about the empirical conditions and proper formats of common liberty.

These disagreements were exhibited in the remarkable "great national discussion"⁵⁶ triggered by the constitutional convention which had gathered in Philadelphia with people like Edmund Randolph, George Mason, Alexander Hamilton, and, above all James Madison among its principal organisers. It continued, and reached a wider public, in elaborate newspaper exchanges and series of 'letters' which were read across the nation and designed to influence opinion in the ratifying states.⁵⁷ Although Madison and others on the Federalist side⁵⁸ had celebrated the 'miraculous' national concord, the truth of the matter was that positions were often bitterly opposed.

All recognised the existence of political crisis in the new country. Law and order left much to be desired as British colonial justice had not yet been adequately replaced. Individual states of the confederacy acted like small, jealous sovereignties, levying taxes on each other's exports and transits, printing their own money, maintaining separate navies, conducting independent diplomacy towards European states, and arguing over territorial boundaries. The confederate body, the *Continental Congress*, was weak, a legislature only, with no powers to regulate commerce, execute its decisions, or apply legal sanction on recalcitrant states.

However, factual disagreements apart, there was no consensus on the significance of these matters. Some saw pending anarchy, the beginning of the destruction of the new American nation, which would establish a continent of quarrelling, warring states, only to perpetuate European mistakes. After all, only a common enemy had united the culturally and institutionally widely diverging states. Others merely recognised the child diseases of a young country that had to find its feet and get co-ordinated over its obvious common interest, co-operating about specific ends. What had been gained in the Revolution should not be jeopardised, it was

secretly wished to break up the union (e.g., Hamilton in *Federalist* no. 1, p.89), whereas a standard Anti-Federalist move, justified in the case of Hamilton, was to accuse the gentlemen in Philadelphia of partaking in the "search for grandeur, power and splendor", *Patrick Henry* (5.16.2.)

56. *Federalist* no. 1 (p.88) (Hamilton).

57. See Kramnick (1987) on the context and prehistory of the Convention. On the ambiguities and changing meanings of 'Federalist' and 'Anti-Federalist', see Storing's excellent long essay on the debate (1981:9-10).

argued, and these fragile gains were interpreted to mean that the natural framework of individual liberty was a strictly *limited*, but also *direct or relatively unmediated* popular government in small states - the existing units of the confederacy.

Individuals like Madison, Hamilton, John Adams, and General George Washington, who eventually agreed to lend his authority to the Philadelphia Convention as its president (and later as first president of the new Union), were inclined to see new dangers to liberty and individual rights in the unprecedented mobilisation and politicisation of the common man. Although an economic class-based explanation would be reductionist, there is no doubt that some of the impulse towards federal consolidation *did* derive from conservative fears of licentious mob rule in the new state legislatures, leading to abolition of public and private debts, inflationary introduction of 'paper money', egalitarian agrarian laws and other "schemes of injustice" and "wicked projects".⁵⁹

Many agreed with the need for consolidation and enforcement of order, but feared central accumulation of power. Some, for instance Madison's co-representative from Virginia, Edmund Randolph, finally thought the constitution went too far in creating an unaccountable aristocracy, and declined to sign. Others, notably Jefferson, who had similar misgiving at first, but for more democratic reasons, eventually gave the constitution his public support. Madison, on the other hand, thought the federal government had been granted insufficient powers, wanting it to have a veto over state legislation. Hamilton, who added to Madison's fears his own conviction that American politics should be modelled on England, wanted to reduce the popular element even more than it finally was.⁶⁰

On the other front, while some Anti-Federalists vehemently opposed the constitution, many did recognise the need for some consolidation. Of these, some (also Randolph) eventually supported ratification, many of them on the condition of future amendments that included a anticipated Bill of Rights.⁶¹

58. Kramnick (1987:13).

59. *Federalist* no. 10 (p.128); Kramnick (1987:20-27). However, Madison also believed that, in Virginia at least, "the body of a sober and steady people, even of the lower order, are tired of the vicissitudes, injustice and follies which have so much characterized public measures, and are impatient for some ... stability and repose", Madison to Jefferson, December 9, 1787, *Republic of Letters*, I (p.510). On the other hand, Anti-Federalists certainly recognized the danger of "subversion of all government" and the need for "security against licentiousness and agrarian laws", *Centinel* (2.7.166).

60. Edmund Randolph (2.5.40-43); Jefferson to Madison, December 20, 1787, *Republic of Letters*, I (pp.513-14) ("I own I am not a friend to a very energetic government"); Madison to Jefferson, September 6 and October 24, 1787, *Republic of Letters*, I (pp.491,499-500). For Hamilton, see Kramnick (1987:35).

61. Storing (1981:67). For instance, see the letter from *A Delegate Who Has Caught Cold* (5.19.13-18).

The two main outcomes of the constitutional settlement were, first, the triumph of the centre over the periphery, i.e., federal sovereignty *vis-à-vis* the states, and secondly, the rise of a 'complex' form of government, based on checks and balances, more remote representation, and a strong executive - as compared to more direct majoritarianism through the legislature. Indeed, the two main clusters of questions of the debate concerned the role of 'the people' and its capacity for virtue versus the need for authority and institutions; and, secondly, the relation and division of sovereignty between localities and a consolidated national level. These disagreements need some unpacking. They can be ordered along several dimensions of argument.⁶² We shall focus in the following on the question of the proper size of a republic, including the conditions of virtue and political identification. Secondly, we look at the (more implicit) debate about the very content of civic virtue. Thirdly, in less detail, we look at the central disagreements over political and institutional architecture, where Madison, in particular, advanced radical new ideas. This debate concerned the proper understanding of principles of representation; the necessity and danger of a strong, central government; the danger or blessings of factions and pluralism in an enlarged political realm; the meaning of division of powers in a government; and the question of whether or not to have a national Bill of Rights. I approach each of these last questions - as did most of Madison's critics - with a view to establish whether and how they challenge traditional republican views of the conditions of liberty.

6. The Small Republic Argument

The most important argument against federal consolidation - indeed the master argument of all the others - appealed to the classical republican idea and "the opinion of the greatest writers" that the natural locus and framework of liberty was a small, relatively homogeneous republic, where citizens were close to their rulers, in terms of their manners and interests, as well as geographically.⁶³ The argument, which was used by the majority of the Anti-Federalists, had a number of different aspects.

The main fear of the Anti-Federalists, which was constantly repeated, was the counterpart to the localist argument for state self-government, which was discussed above: no federal government, indeed no government at all, would be capable of catering to the "various local concerns and interests" of all the states. The remoteness of the capital, the lack of knowledge, responsibility, and concern on behalf of politicians who did not have their origin among the people they nominally represented, the technical impracticality of having one government taking care of all the affairs of a large country, the difficulty of effecting speedy dispensation of

62. See also Storing (1981).

63. *Centinel* (2.7.17). On the origin of the small republic argument, see Draper (1982:35).

justice at the margins of the territory, and the need or propensity of such a government to sacrifice diversity and local wishes at the altar of efficiency and uniformity, all this conspired to militate against republics in large territories.⁶⁴

Federalist responses to these fears took various forms. At times it involved a criticism of the parochialism, narrow-mindedness, or even blatant egoism of what Madison called "the spirit of locality" and Hamilton "a spirit of interested scrutiny, without ... knowledge of national circumstances". In fact, Madison was of the opinion that what the states called their special state 'concerns' as often as not consisted in the opinions and interests of tyrannical majorities which a federal government ought to restrain rather than empower. Indeed, the advertised homogeneity of even smaller states, let alone the larger ones, was vastly exaggerated. Even so, the Anti-Federalist argument had deep popular roots. Thus, the more important Federalist response was to argue that the federal level would only deal with what *had* to be regulated at a federal level. This was the start of a 'subsidiarity' discussion which raised, as we shall see, as many questions as it answered.⁶⁵ But the small republic argument also contained versions of the instrumentalist republican virtue theme: Only in small republics was it possible to generate the voluntary allegiance that a state required; and, as a related point, discussed below, only in the small republic was it possible to generate and keep the requisite level of virtue in the people. Let us look here at the question of allegiance.

Federalists and Anti-Federalists agreed that allegiance essentially required good government, i.e., the experience that one's rights and liberty was furthered. To *The Federal Farmer* it was clear that "the laws of a free government rest on the confidence of the people" and that "the benefits of the government" may "induce the people to support it voluntarily". Madison agreed that the absence or erosion of such benefits, including, in a federal context, the benefit of government stability would lead to "that diminution of attachment and reverence which steals into the hearts of the people".⁶⁶

At one level, the Anti-Federalist-Federalist dispute simply concerned whether such benefits were actually forthcoming, with the former group denying that the central government would adequately cater for concrete local concerns "in the extremes", and claiming that intruding laws could only be "executed on the principles of fear and force". Madison, here, contended the possibility of a rational (at times, as in the famous *Federalist* no. 51, even a quasi-Hobbesian) understanding in the great body of the people of the need for federal government. Such an understanding

64. *Centinel* (2.7.19). Cp., e.g., *Cato* (2.6.13-21); *The Federal Farmer* (2.8.14); *Brutus* (2.9.14-20).

65. Madison, in Kramnick (1987:45); *Federalist* no. 15 (Hamilton); Madison to Jefferson, October 24, 1787, *Republic of Letters*, I (p.500).

66. *Federal Farmer* (2.8.18); cp. *Brutus* (2.9.18) and *Cato* (2.6.16-17); *Federalist* no. 62 (p.368).

had to be strengthened by habituation in public opinion, and Madison believed experience of the shortcomings of the confederacy had contributed to this, although this did not prevent him from occasional exhortations on the spectre of the Union dissolving and about the need for "every man who loves liberty ... to have it [the spectre] ever before his eyes that he may cherish a due attachment to the Union of America".⁶⁷

Sinopoli, who notes the above,⁶⁸ makes a great deal of the fact that Anti-Federalists did not expect allegiance and identification to arise from 'pure' virtue, unaided by interest, or see participation as a value in itself, the opportunity of which might create loyalty. In stead he points to a defining contrast between two different moral psychologies, both of which were 'liberal'. One, he claims, was a (poor) Hutchesonian argument to the effect that identification and a sense of allegiance requires proximity, and that the further beyond the most intimate circles of family and friends citizens are required to look, the weaker will be the social bond. The other was the Humean argument about habitual opinion, discussed in the previous chapter.

Scottish moral sense psychology clearly had some impact in America. The clearest example, duly cited by Sinopoli, is *Cato*:

the principles which bind [mankind] ... together (...) are ... like a pebble cast on the calm surface of the river, the circles begin in the center, and are small, active, and forcible, but as they depart from that point, they lose their force, and vanish into calmness. The strongest principle of union resides within our domestic walls ...; the next general principle of union is amongst citizens of the same state, where acquaintance, habits, and fortunes, nourish affection, and attachment; enlarge the circle still further, and, as citizens of different states ... by degrees, we lessen in our attachments, till, at length, we no more than acknowledge a sameness of species⁶⁹

Yet, Sinopoli overestimates the significance of this new argument. First of all, it is really only found so explicitly stated in *Cato*. Sinopoli has the (important) ambition of countering Pocock's faulty depiction of a civic humanist moment among the Anti-Federalists. I submit that this ambition, along with the unfortunate tendency among critics of civic humanist revisionism to accept Pocock's terms of debate, induces Sinopoli to miss the most important dimension of difference between Federalist and Anti-Federalist positions on civic allegiance. All participants to the debate acknowledged the importance of 'an opinion of interest' as the core of an allegiance

67. *Federal Farmer* (2.8.18); *Federalist* no. 49 (p.314); no. 41 (p.369); cp. also no. 46 (p.298).

68. Sinopoli (1992:136-55).

69. *Cato* (2.6.19-20).

or patriotism which, while more or less supported by habit, was in this sense *rational*. And, as in fact noted by Sinopoli himself, also Hamilton used the circle-of-affection argument, only to opposite ends, namely to suggest that states need never fear encroachments by the federal government, as the first allegiance of citizens (and thus the immediate impulse to defend) would always tend to be directed towards the local level.⁷⁰ The illuminating differences are in the details:

Neither Cato and other Anti-Federalists nor, obviously, Hamilton suggested that politics could somehow be based on Hutchesonian benevolence - whatever the extent of its sphere. The argument about natural affections being weakened "in proportion to the distance or diffusiveness of the object" was clearly assimilated, and subordinated, to a recognisably republican (and, in the case of Hamilton, anti-republican) frame of thought. Thus, when Cato used the argument, it was linked, first, to the argument about diversity (e.g., the impossibility of trusting idle Southern slave owners to be virtuous). Secondly, and prominently, it was concerned with trust and knowledge that demands for the sacrifices and allegiance of individual citizens were in fact linked to a general interest, of which they were themselves a part, "the interests of the public" in a small republic being "easily perceived, better understood, and more within the reach of each citizen". In particular, such circumstances rendered it possible to ascertain that one's contributions were not abused ("employments of your country disposed of to the opulent"). Moreover, the familiar size, distance, and homogeneity arguments were not employed by Cato in the name of natural sympathy, but, again, because "from the vast extent of the territory, and the complication of interests, the science of government will become intricate and perplexed, and too mysterious to understand, and observe".⁷¹

In the case of Brutus, whose discussion significantly is tied with the issue of representation and political trust, the difficulty of a large republic was that, representatives being too distant, they "cannot, as they now do, mix with the people, and explain to them the motives which induced the adoption of any measure, point out its utility, and remove objections". The result will be that

they will be considered ambitious and designing. They will not be viewed by the people as part of themselves, but as a body distinct from them, and having separate interests to pursue (...) [A] perpetual jealousy will exist ... and their laws [will be] opposed, evaded, or reluctantly obeyed⁷²

What was at stake, when Brutus proceeded to speak about "natural" confidence in those who are near, as opposed to strangers, has little to do with sympathy and feeling, and a great deal more with knowledge, security of consequences, and rational trust.

70. *Federalist* no. 17 (p.157).

71. *Federalist* no. 17 (p.157) (Hamilton); *Cato* (2.6.13-14).

72. *Brutus* (2.9.49).

The contrast to the conservative Hamilton does not regard this rational core. Hamilton believed in the "general rule that ... confidence in and obedience to government ... [is] proportioned to the goodness or badness of its administration". And also this author quickly departed from the circle-of-affections argument. What really made a difference at the state level, he reminded his reader, was the existence of an,

attractive source of popular obedience and attachment (...) which, being the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake

What Hamilton had in mind was "the ordinary system of criminal and civil justice" which constituted a "great cement of society, which will diffuse itself almost wholly through the channels of the particular governments". Yet, upon consideration, Hamilton - who not only needed to assure his readers that state loyalty was a safeguard against federal abuse of power, but also that a national government could in fact gain popular support - argued that loyalties could in fact become directed towards a higher political level, as

the more the operations of the national authority are intermingled in the ordinary exercise of government, the more citizens are accustomed to meet with it ... the greater the probability that it will conciliate the respect and attachment of the community

Quickly leaving Hutchesonian language ("familiarized to their sight and to their feelings, ... touch[ing] the most sensible chords and ... the most active springs of the human heart"), Hamilton switched to his Humean gear, noting how "[m]an is very much a creature of habit". The "habitual sense of obligation" will be aided by the gradually increasing "familiarity and comprehensiveness" of a national government which progressively extends its authority.⁷³

The difference to the Anti-Federalists was that Hamilton thought allegiance could arise simply by experiencing a benign authority in 'matters of internal concern', and by coming to see this as natural. In this belief the difference to Madison was only marginal, the latter probably believing in a slightly more active and mature attitude of allegiance. Anti-Federalists, on the other hand, emphasised distrust and the lack of obvious benefits, but also the republican point that allegiance required a direct reminding of how one's own interest was partaking in that of the whole.

73. *Federalist* no. 17 (Hamilton) (pp.157-58); *Federalist* no. 27 (Hamilton) (pp.201-3).

In writers like Brutus, who distrusted direct democracy for conservative reasons which he shared with some of the Federalists, the argument was about the necessity of sufficient closeness to those individuals whose patriotic works *did* further the common interest, and to those political institutions which embodied it. In other, more radical Anti-Federalists, the point became an independent argument for local political participation as a device of education to patriotism. A classical statement of this view (whose author, however, was pessimistic about its realism) was the *[Maryland] Farmer* who, along with calls for useful public education, i.e., in "the principles of free government, illustrated by the history of mankind" advanced proposals about direct participatory schemes with assemblages of freeholders, and the detainment of jury trial. If such measures were taken - at state level - he promised that "in a very few years, the people instead of abusing, would wade in their knees in blood, to defend their governments" - *state* governments, that was. Sinopoli, who also discusses this Anti-Federalist text, recognises that, here, "[t]he virtue of direct democracy is the cultivation of the faculties of those who participate in it". He cites the claim that, "people are capable of being made any thing ... if we only ... give them good and wholesome institutions" and that

[m]en no longer cultivate, what is no longer useful, - should every opportunity be taken away, of exercising their reason, you will reduce them to that state of mental baseness, in which they appear in nine-tenths of this globe

But Sinopoli quite mistakenly interprets as secondary the (direct) instrumental idea that participation is the best defence against power and, in the case of the jury, he claims that the 'cultivation of faculties' was only lauded because such cultivation, and activities that sustain it, are "intrinsically valuable for all the reasons republicans have always claimed", ignoring the general thrust of the *[Maryland] Farmer's* argument, i.e., that such faculties are needed to maintain liberty.⁷⁴

To say that many Anti-Federalists were merely making an instrumental point is half true - in fact *all* of them were, and few valued either participation or localism for its own sake.⁷⁵ But Anti-Federalist instrumentalism arguments cut much deeper than the half-hearted natural sympathy idea. This may be recognised, once the very poverty and inconsistency of the circle-of-affection theme is noted, once attention is paid to the decidedly un-Hutchesonian realism and scepticism about power and its abuse which characterised Anti-Federalists, and once the details of the texts are related to established republican ideas.

Thus, on the one hand, a reconstruction of the Anti-Federalist position does indeed highlight weaknesses in the face of arguments by Hamilton and Madison. The Anti-Federalist claim that rational allegiance could not be forthcoming, be-

74. A *[Maryland] Farmer* (5.1.52,67,82); Sinopoli (1992:151-55).

cause federal government could not cater for liberty in its local particularity, was vulnerable for two reasons. First, it could be claimed that the larger view afforded by being a citizen in a national union would cause the more parochial and illiberal demands of local liberty to evaporate. Secondly, a consolidated republic might earn the same, or even a better allegiance from the people, as, over time, the people would see that it secured their liberties more effectively, catered for concerns - the securities and benefits that only a union could produce - that states failed to deliver. If these points, made by *Publius* and others, were vindicated, *The Federal Farmer* might stand defeated, with his admission of being "in favor of any general system which shall promise these advantages [protection of property and a steady execution of the laws]".⁷⁶

On the other hand, an Anti-Federalist rejoinder was still possible. Thus, when Federalists claimed allegiance to be a mixture of rational common interest and habituation, Anti-Federalists may be seen to represent the less optimistic position that rational allegiance required to be awakened and sustained by certain activating political mechanisms.⁷⁷

Indeed, this Anti-Federalist point was not lost on Jefferson. First, Jefferson strongly believed that patriotic allegiance had to be revitalised from time to time. Hence those occasional remarks, reminiscent of the Machiavelli-Cato's Letters-Rousseau-Ferguson trail, to the effect that a degree of virile, even unruly, patriotic fervour was necessary, even if the price free countries had to pay for this was acceptance of occasional unrest or rebellion - even spilled blood.⁷⁸

Secondly, a related concern was part of the background of Jefferson's famous ward argument, formulated towards the end of his life.⁷⁹ While the cosmopolitan and French inspired Jefferson had little sympathy with the parochial and particularist side to the Anti-Federal case, let alone with its distrust of the capacity of ordinary people to discern the matters of national politics, he did agree with the idea that local participation might be a way to remember the value of one's liberty. He may be read as adding to this the point that some of the more nativist Anti-Federalists missed - that participation was a way to transcend local prejudices and the comfortably selective loyalties to family, friends, and locality. Jefferson and more radical Anti-Federalists like the Maryland Farmer were surely on the retreat about the political practicality of such participatory schemes. But as alternative

75. Sinopoli (1992:141).

76. *A Federal Farmer* (2.8.24), also cited in Sinopoli (1992:140).

77. They also advanced a second argument about rational allegiance and patriotism, centring around the need for a Bill of Rights as an identity device, to which we return below.

78. E.g., Jefferson to William Short, January 3, 1793, *Papers* (25:14-17).

79. See Pangle (1988:102-3).

voices in the founding debate, they advanced concerns that were to be revived later, above all in Tocqueville.⁸⁰

7. The Meaning of Civic Virtue

Just as different causal accounts existed about the mechanisms for generating patriotic identification and allegiance, the very meaning of the desirable activities and dispositions making up civic virtue had begun to shift in the American debate. However, as understandings of the signification, the required extent, and the means of generating or retaining virtue began to change, *virtue* came to constitute one more conceptual battleground for the challenge of republicanism.

At the most general level, as many commentators have noted, several of the virtues advocated by American writers may be interpreted as 'liberal' and Christian, i.e., primarily traits of character and moral dispositions that belonged to private, rather than to public life. Several distinct, although overlapping, developments of the language of virtue may be discerned, all of them of European origin.

One of these developments, stressed by Kramnick, consisted in the rise of capitalist or possessive individualist 'liberal' virtues. Here, according to this author, *patronage* and the idle and corrupt life of the city was opposed, not so much to civic independence but rather to industriousness, productivity, the free and unrestrained development of talent, and the just material rewards of private enterprise. Virtue was reformulated in terms of the glory of work and frugality, and embodied in the new social hero, not the *zoon politikon*, but the scientist or economic innovator and benefactor, such as Benjamin Franklin. Vice, by contrast, was wastefulness, the habit of spending beyond one's means, or without due purpose, violating the latter's injunction to make "no expense but to do good to others or yourself; i.e., waste nothing". Franklin, it should be noted, listed a whole thirteen virtues, from temperance to humility, each of which he resolved to acquire by turn.⁸¹

Joyce Appleby, in her competing account of the genesis of American liberalism, has noted how virtue became the capacity, not to participate in government, but to live a private and associational life, free from political authority, yet partaking - through commerce, science, religion, but also social life in general - in the progress benefiting all. The common denominator of such *enlightened* virtue was the autonomous use of one's free reason. In this liberal creed, Appleby summarises, nature had "endowed human beings with the capacity to think for themselves and act in their behalf". The creed emphasised freedom of choice in matters of "religion, marriage, intellectual pursuits and electoral politics" and the importance of free intellectual enquiry. However, Appleby's account of Enlightenment individualism

80. Jefferson to John Tyler, May 26, 1810; Jefferson to Joseph C. Cabell, February 2, 1816; Jefferson to Samuel Kercheval, July 12, 1816, *Life and Writings* (pp.610-11,660-62,676).

81. Kramnick (1982; 1987; 1990); Franklin, *Autobiography* (pp.98-110).

underemphasises how Locke as well as Scottish moral philosophy, as taught at the new American universities, combined self-direction and independence with voluntary performance of objective moral duty. While different, more or less optimistic, moral sense psychologies were adopted by Americans, they were typically combined with a stress on moral education and deliberate work on one's own character.⁸²

Just as the capitalist virtues of frugality and hard labour, in Locke, shaded into moral virtues of self-control and 'moral labour',⁸³ the latter was part of broader Christian conceptions of man's worldly callings and corresponding virtues. However, the impact of religion on early American political culture exhibited large denominational and geographical differences. Compared to Puritans like Adams, some American intellectuals, in particular Jefferson and Paine, were influenced by the sceptical (French) Enlightenment and had either deist or moderate Anglican leanings, although their views too were shaped by Puritanism.⁸⁴ But Southern Baptist evangelicalism and radical Puritan millenarianism in the North in different ways produced conceptions of even more demanding social and political life. Virtue, here, concerned the duty to resist earthly depravities and to further selfless benevolence, in rulers and citizens alike. More particularly, commentators have stressed the political significance of the radically levelling, anti-authoritarian impulse of Protestant theology, and the Puritan idea of the covenant with its stress on participation. Radical religion in America was often tied, at the outset, to an extrovert and mobilising culture of mission and spiritual awakening.⁸⁵

The exact content and influence of these diverse vocabularies of virtue is a complicated matter. From our point of view, it is essential to stress that neither of the discourses were islands to themselves, and that all were internally highly ambiguous. Although eventually each of them came to denominate influential, autonomous justifications of worthy or legitimate activities of an essentially private nature, the very ambiguity of each discourse also facilitated their adaptation to republican concerns, including the classical terms of corruption and the common good. They were *virtues*, in the sense of character traits and dispositions which, while facilitated by natural potentialities and endowments, were artificial, fragile, and in occasional need of institutional or educational reinforcement. Moreover, the discourses could be employed, not only to identify what was generally beneficial to society, but also in connection with the more strictly political roles of citizens. Let us briefly consider each of them.

82. Appleby (1992:1).

83. Dienstag (1996a).

84. Vetterli & Bryner (1987:59-61).

85. On the role of religion at the founding, see Bloch (1990); Pangle (1988:78-88); Vetterli & Bryner (1987:74-77).

7.1. The Virtues of Capitalist Enterprise

Hamilton, his praise of capitalism unmixed, appealed in *Federalist* no. 12 to the widespread appreciation by "enlightened statesmen" of the benefits of commerce:

By multiplying the means of gratification, by promoting the introduction of the precious metals ... it serves to vivify and invigorate all the channels of industry ... The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer - all orders of men look forward with eager expectation and growing alacrity to this pleasing reward of their toils⁸⁶

But this Humean celebration of the effects on *character* of commerce was not, at the time of the founding, the more prevalent view. The generally favourable view of industry, enterprise, and frugality prevailed in a moral atmosphere which was still far from friendly towards economic egoism. Like Jefferson's, even Franklin's ideas of a good life involved economic self-sufficiency and enough comfort to afford an opportunity to pursue higher (religious) callings, but by no means the sanctioning of luxury or the vain pursuit of 'precious metals'.⁸⁷

The virtues of capitalist enterprise were advocated for different and sometimes conflicting reasons. One, associated with Franklin's own example (as projected in the *Autobiography*), centred on the ideal of the "restless ... 'self-made' man ... who prudently discerns the link between his rise and the promotion of useful 'projects' which benefit his neighbors and attract their esteem, affection, and assistance". Here, the pathos of the great individual statesman, acting for the good of all, was transferred to the realm of economics, and attached to the objects of general (national) prosperity and welfare, rather than to those of political liberty and security.⁸⁸

The virtue of frugality could also have a more political, indeed a republican, flavour. Thus, in Jefferson as well as in many Anti-Federalist, it was a recurring concern to restrict or delay, possibly by means of legislation, the unnecessary consumption and "excessive importations of foreign merchandise and luxuries", in order to avoid economic *dependency*, and to consolidate the economic health and stability of the new nation. For the people, this virtue translated to restricting consumption to domestic produce; for politicians, it involved resisting temptations to undue taxation and, particularly, the protraction of public debts.⁸⁹

86. *Federalist* no. 12 (p.134) (Hamilton).

87. Franklin, *Autobiography*; Jefferson to Samuel Kercheval, July 12, 1816, *Life and Writings* (p.673).

88. Pangle (1988:97).

89. *Centinel* (2.7.103), cp. *Candidus* (4.9.18) and *A Plebeian* (6.11.22-23); Jefferson to Archibald Stuart, January 25, 1786, *Papers* (9:219-20); Pangle (1988:93-94).

Almost all participants to the American debate, including most Anti-Federalists, accepted the usefulness of commerce. Jefferson, Madison, and Adams worked as presidents to promote it, and none had much patience with nostalgic appeals to Spartan simplicity.⁹⁰ Yet, in terms of the debate on commercial civil society as conducted in Europe, the founders were generally less unambiguously positive about commerce than Montesquieu or Hume. While commerce was noted as a prime fruit of liberty and good government, few, apart from Hamilton, were as ready to adopt Montesquieu's argument about commercial interdependence as *Agrippa*, who saw in commerce "the great bond of union among citizens". Many Anti-Federalists voiced traditional concerns that "the progress of a commercial society begets luxury, the parent of inequality, the foe to virtue, and the enemy to restraint", and that when "people become more luxurious, they become more incapacitated of governing themselves". Jefferson, notoriously, never missing an occasion to state his wish, as based "on principles of theory alone", that the states should "practice neither commerce nor navigation", keeping citizens in the condition of "husbandmen", as "[c]ultivators of the earth are the most valuable citizens ... the most vigorous, the most independant, the most virtuous ... tied to their country, and wedded to it's liberty and interests, by the most lasting bands".⁹¹

Jefferson invariably went on to note that such schemes were against the democratic will of the American people, difficult to practice in an open, increasingly commercial world, and even morally dubious for other reasons.⁹² Yet, to claim that founders, including Jefferson or Madison, "identified happiness with property and material pleasure", and that neither "committed America to political ideals that appealed to man's higher nature" is certainly inaccurate.⁹³ Many Federalists, including Jefferson and Madison, did see material indulgence and vanity as evil in itself. Madison deplored the "despotism" of a situation where "twenty thousand persons are to get or go without their bread, as a wanton youth, may fancy to wear his shoes with or without straps, or to fasten his straps with strings or with buckles."⁹⁴ However, only Adams contemplated making it a political concern to remedy it by

90. Kloppenberg (1987:26); Storing (1981:45).

91. *Agrippa* (4.6.6); *Cato* (2.6.34); *Charles Turner* (4.18.1); Jefferson to John Jay, August 13, 1785; Jefferson to Hogendrop, October 13, 1785, *Papers* (8:426,633); cp. also *Notes on Virginia*, query 19, *Life and Writings* (pp.280-81).

92. Jefferson was uncomfortably aware that rural virtue, in America as in ancient republics, seemed to go hand in hand with slave economy. His occasional egocentric notion that America should pursue its virtue alone, exporting its corruption as it were ("let our workshops remain in Europe"), is difficult to take entirely seriously, *Notes on Virginia*, query 18 and 19, *Life and Writings* (pp.277-81).

93. Diggins (1986:5).

94. Madison, in the *National Gazette*, March 20, 1792, *Papers* (14:258, italics in original).

"prudent and reasonable sumptuary laws". Moreover, it was certainly believed to be potentially harmful in the familiar instrumental republican sense.⁹⁵

It may well be, as Storing says about the Anti-Federalists, that much of the worry "was the half-hearted criticism of children of the modern commercial world who worried about its implications".⁹⁶ However, in the case of more sophisticated Federalists like Jefferson, Adams, and even Madison, it is equally possible to detect a deep and self-conscious scepticism that the desirable spirit of frugality and moderation was a necessary, or even a likely outcome of *doux commerce*. From the point of view of the likes of Hamilton, they were feet-dragging their way into the new century. Although Madison drew more conservative conclusions than Jefferson, he too stressed the importance of agriculture and wide spread property in land and, in the commercial society he after all favoured, the danger of "immoderate, and especially unmerited, accumulation of riches".⁹⁷ Neither he nor Jefferson were adverse to more limited government programs of regulation and creation of infrastructure. But they were very sceptical about Hamilton's modern vision of an industrialised society with highly developed division of labour, which, he alleged, would rid society of its burden of idle labour power and even, in the process, cause

each individual to find his proper element, and ... call into activity the whole vigor of his nature [so that] the community is benefitted by the services of its respective members, in the manner in which each can serve it with the most effect

And if they were sceptical about this rosy adoption of Smith's economics, and the claim that it would not only promote "the wealth of a nation", but also "cherish and stimulate the activity of the human mind", they were positively abhorred by Hamilton's schemes for the creation of national banking with its floating 'paper money' credit, and the possibility of accumulation of enormous financial power at the centre of the nation. Finally, it was Hamilton only who went all the way with Hume, in the acceptance of luxury, pursuit of vanity, and esteem for mere possession of material wealth, as essentially beneficial, because of their stimulating effects on economic productivity.⁹⁸

In retrospect, the reservations of Jefferson and even Madison seem backward looking. But although their fears were like a bad consciousness which they did not have the political visions to deal with, their premonitions, arguably, were vindi-

95. Adams, *Defense*, Vol. III, Ninth Argument (p.349); Pangle (1988:93).

96. Storing (1981:46).

97. Madison, National Gazette, January 23, 1792, *Papers* (14:197).

98. Hamilton, *Report on Manufactures*, in *On Public Credit, Commerce, and Finance* (pp.195-96); Hamilton, Speech to the New York Ratifying Convention, June 21, 1788, *Papers*, 5 (pp.42-43). For Hamilton's open-eyed acceptance of the erosion of virtue, and for John Adam's Calvinist despair, see the discussion in Diggins (1986:53-55).

cated. The virtues of the capitalist entrepreneur, originally beneficial for society and national politics, were eventually transformed into mindless specialisation and consumerism - creating the one-dimensional pseudo-citizens feared by Jefferson, and overlooked in Hamilton's reading of Smith. The same virtues facilitated the sanctioning of egoism and acquisitiveness by that appeal to inalienable property rights, unrestrained by duty and purpose, except the duty to refrain from trespassing on the holdings of others, a duty which Madison, expressly, had not intended in his defence of property rights. Acquisitiveness and egoism were not, of course, eventually 'virtues' but necessary and beneficial vices, legitimate at least in the economic sphere, but gaining such respectability in an era where this sphere was to take up ever more room in the space of human pursuits.

7.2. Religious Virtue

Religious conceptions of virtue were equally widespread, but also equally ambiguous in their content. When Anti-Federalists advocated Christian virtues for political purposes, they rarely advanced intrinsically moral reason. However, religious freedom was often interpreted as a collective exercise of a self-government which also aimed at the expression, or at least the protection, of a specific religion and the liberties it required (such as the rights of Quakers not to bear arms).⁹⁹ Few perceived any conflict between favouring religious liberty (primarily of their own group) as protected by a Bill of Rights, and on the other hand requiring religious tests for politicians entering office, lest "Jews, Turks, and Heathen" be elected.¹⁰⁰

Whatever the private convictions of devote Christians partaking in the national debate, the main line of advocacy was instrumental. Here, Anti-Federalists were not alone. Jefferson, in a manner foreshadowing Tocqueville, would often stress the importance of religion as a school of general moral virtue. In letters to his own children and to other young people, he never missed an opportunity to note the fragility of personal morality and the need to work 'on one's own habits. In the *Notes on Virginia*, he argued that "the liberties of a nation" could not "be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God". By contrast, Madison was not always inclined to rely on religion as a fountain of virtue and noted the patent "inefficacy of this restraint" as evidenced by the propensity of individuals to "join without remorse in acts against which their consciences would revolt, if proposed to them separately in their closets". Indeed, "Religion ... kindled into enthusiasm ... has been much oftener a motive to oppression than a restraint from it". These differences apart, Jefferson joined Madison's principled and life-long fight to separate church and state. Madison thought that the co-existence (and mutual balancing) of

99. *Philadelphiensis* (3.9.11-12).

100. *A Watchman* (4.22.4).

a large variety of sects was most conducive to a peaceful civil society, and even to a sense of justice and political allegiance on behalf of persecuted immigrants coming to America. Jefferson's version of beneficial religious pluralism was slightly different, and much more optimistic. True religious spirit - Unitarianism rather than doctrinaire sectarianism - was compatible with, and eventually conducive to a spirit of tolerance and reflection.¹⁰¹

While Federalists either denied the importance of religion, or, as most often, believed it could be relied upon without illiberal and-counterproductive legislation, Anti-Federalists tended to stress not only that "without the prevalence of *Christian piety, and morals*, the best republican constitution can never save us from slavery and ruin", and that only religion was capable of rendering "the people a law unto themselves", but also that this entailed the need of "some superiour mode of education" and other state measures of "publick protection of religion", such as religious tests, in order to secure the quality of both "the patriotic civilian and [the] ruler".¹⁰²

In some of these writings, as in the state political cultures from which they emanated, Christian virtue was more like the enthusiasm that Jefferson and Madison feared, i.e., a politicised religious martialism that re-reversed the Machiavellian vocabulary of virtue in manners that had already been seen in Puritan England. However, religious virtue could take on many forms. In some states, a fusion appeared between Christian moral fervour and republicanism, with self-governing communities possessed of a holy cause which was both the practice and development of virtue and the political conditions of being free to effect this. The practice of the *jeremiads*, calling for the renewal of faith and old covenants, and the impact of the 'Great Awakening' around the middle of the eighteenth century could relatively smoothly fit the republican theme of return to beginnings.¹⁰³ But also with regard to the language of religious virtue, the inherent ambiguity of its vocabulary was obvious. The radical political meaning of religion did not last long, and its impact, by the time of the constitutional convention, may be exaggerated.¹⁰⁴ Already from the Calvinist perspectives of Adams, religion conceptualised the fallen nature of (American) men, their inherent susceptibility to blindness and pride, rather than their elevated stature and future mission in the New World. Corruption was conceptualised as *sinfulness*, and what was called for, despite Adams' occasional invocation of American virtue, was also strong government machinery to save individu-

101. Madison to Jefferson, October 24, 1787, *Republic of Letters*, I (p.502); Madison to Mordecai M. Noah, May 15, 1818, *The Complete Madison* (p.310) (but cp. discussion and contrary evidence in Vetterli & Bryner (1987:69); Jefferson, *Notes on Virginia*, Query 17 and 18, *Life and Writings* (pp.272-78).

102. Turner (4.18.2); *Letter by David* (4.24.6); cp. Luther Martin (2.4.108) and *A Friend to the Rights of the People* (4.23.3).

103. Vetterli & Bryner (1987:50-54).

104. E.g., Vetterli & Bryner (1987:54).

als from their own inherent depravities, and possibly aiding, marginally, their moral progress.¹⁰⁵

In the consolidated republic, generally speaking, the political impulse of religion became less than radical, stressing the respect for secular authority, the inherent weakness of human virtue and capacity for independence, even the more or less principled turning away from a political scene, which came to be seen as a tribune of (necessary) vice. And much of the less demanding language of Christian moral virtue, favoured by Jefferson, eventually dissolved into a language of private propriety.¹⁰⁶

7.3. *Autonomy*

The third class of new virtues consisted of the high valuation of personal autonomy, but coupled with an emphasis on self-direction, control of one's passions and immediate desires, and the voluntary performance of social duty. As evident already in Locke, the three types of virtue often went together and overlapped. Reflective self-restraint was tied to hard work and frugality. And both these virtues were easily combined with a universe of religious duty. But as acquisitiveness was capable of losing its connection to socially beneficial and community-directed enterprise, liberal ideals of self-direction had no *necessary* connection with Christian morality, although, as noted, conventional understandings of the 'liberal' eighteenth century vastly overestimates the degree to which a break had occurred at this early stage. Moreover, like the other virtues, also this category of character traits and dispositions could be given representations of differing political consequence.

Education was seen as important by most of the American writers, although not by the more conservative Anti-Federalists. However, Jefferson, the father of the University of Virginia, assigned it the most prominent place. He wrote numerous letters to friends and the children of friends detailing advice on the proper election and division of subjects and literature, the manner of studying, and the prospective benefits of education. Education could provide "character on the mind", a capacity to reflect independently on every matter of science, nature, or religion ("Fix reason firmly in her seat, and call to her tribunal every fact, every opinion. Question even the existence of a God"). But even the, in this context, most classical of the American writers did not favour contemplation for its own sake. Knowledge and independence of thought was necessary, as in Locke, in order to deliberately effect one's own moral development, even one's "comfort ... in the moment of death". And it was most of all a prerequisite for a life of useful, practical pursuits, contributing directly to the good of the community. Through education, he sermonised a nephew, it is

105. For Adams' position, see Diggins (1986:74-99); but cp. Lerner (1979:23ff).

106. Kloppenberg (1987).

possible be "good, be learned, an be industrious", and hence "render you[rself] precious to your country, dear to your friends, happy within yourself".¹⁰⁷

The values of autonomous reflection, personal responsibility, and pursuit of knowledge were often linked to social 'usefulness' of a general kind, depending upon one's station in life. Jefferson often had in mind, for his young gentleman friends, administrative offices and legal careers. But the same values were also capable of assuming a distinctly civic guise. To Madison, it was certain that "a well-instructed people alone can be permanently a free people". National institutions of learning would "enlighten ... the opinions [and] ... expand ... the patriotism" of those resorting to them, "sources of jealousy and prejudice would be diminished" and such institutions would "throw that light over the public mind which is the best security against crafty and dangerous encroachments on the public liberty". Jefferson, abhorred by French nobility's exploitation of popular ignorance, considered "by far the most important bill in our whole code ... that for the diffusion of knowledge among the people", the only "sure foundation ... for the preservation of freedom and happiness".¹⁰⁸

In particular Jefferson's conception of the citizen was an archtypical fusion of Enlightenment ideals of reflective individualism and earlier languages of political self-government. Where traditional republican conceptions of civic virtue tended to stress more collective and spontaneous identifications with the common good and resistance of corruption, we now see two things. First, instrumentally speaking, while classical virtue tended to focus on will, determination, and habituation through practice, Jefferson's stress on autonomy and individual exercise of reason added to this the necessity of qualification, specific abilities, and education to virtue, although still as something which had to be willed and mastered by the individual, a 'virtue' that could be unlearned as well as learned. Moreover, if classical citizens had to be 'independent', this was more of a political than a moral and intellectual notion - republican citizenship, despite Jefferson's optimism, in some respects had become more demanding.

Secondly, Jefferson's thought marks an early high point in a distinctly political conception of liberal autonomy.¹⁰⁹ It did so in two related ways. On the one hand,

107. Jefferson to Peter Carr, August 19, 1785 and August 10, 1787, *Papers* (8:406; 12:15-18).

108. Madison, Second annual message, December 5, 1810; Madison to W.T. Barry, August 4, 1822, *The Complete Madison* (pp.313,316). Jefferson to Mr. Wythe, August 13, 1786 *Papers* (10:244). Cp. for Adams' similar position, Lerner's discussion (1979:165).

109. Haakonssen (1991). Kloppenborg (1987:22) shows how the terms of 'interest', 'utility', and 'happiness', as used by Jefferson and contrary to the flattened nineteenth century moral vocabulary of utilitarianism, assumes the understanding of everybody's interest in becoming a good, reflective and responsible, person. See Jefferson to Peter Carr, August 19, 1785, *Papers* (8:405-408) and particularly Jefferson to Thomas Law, June 13, 1814, *Life and Writings* (pp.637-40).

political self-government - and more particularly *limited* self-government - was not only conceptualised as the necessary format of liberty that could rid America of British tyranny. Self-government was also seen as the way in which a morally mature people could ensure the requisite space to practice private and community based autonomy, reflecting upon and choosing their (true) religion; and ordering their own (properly benevolent) economic dealings. Although not all were equally capable of such autonomy, the ideal prompted Jefferson to stress that, in intellectual and religious matters, before God, a person was "answerable, not for the rightness, but uprightness" of decisions taken. On the other hand, self-government was itself a vehicle for a collective form of autonomy. Here, the joint exercise of everybody's natural and divinely sanctioned political rights was an outlet for the human capacity to understand and confirm the collective aspects of self-imposed restrictions. This aspect was all the more important in a universe where God had retreated more and more, leaving a degree of complexity and indeterminacy to all things political, where the people's wisdom (at least their capacity to appreciate the wisdom of their elected leaders) was the only fountain of inputs to an open-ended constitutionalism.¹¹⁰

To the extent that republican self-government was ever a moral value in itself, the origins of such ideas were relatively late additions. Old republican vocabulary certainly contained much approving reference to the dignity, health, and independent character of self-governing peoples. But it was an early liberal and Protestant invention to associate the language of civic character with a moral premium on reflective self-legislation. This fusion of autonomy and political self-government was not long-lasting. Gradually relieved of Lockean and Christian concern for private salvation and objective social duty, 'autonomy' was to feed into the modern political culture of pluralism in America, a culture which placed independent value on each individual's private choice to pursue a diversity of religious, intellectual, or economic gratifications. Secondly, in the classical tradition, private property served to make people independent enough to be good citizens; but capitalist ideology came to invest economic activity as such with the moral dignity of independence, now understood as (market) self-sufficiency. Eventually, this 'autonomy' could become detached from both social benevolence and political duty, not least because of the difficulty of sustaining a moralised conception of political autonomy in an era of remote and routinised representative democracy.

7.4. A New Vocabulary of Civic Virtue?

A great many languages of virtue came together at the time of the American Founding. I have not tried to determine their relative impacts. What has been demonstrated is that the languages were not mutually exclusive (they often supported

110. Jefferson to Peter Carr, *Papers* (12:17).

each other), and that each constituted a conceptual framework that could be put to a variety of uses. In particular, they could be employed in a more or less civic manner. First, as private and social virtues, they were not *incompatible* with political conceptions of citizenship. The good father or son, the devote Christian who cared for his own faith and that of others and helped the needy, the responsible and enterprising businessman, all were figures whose activities could be represented as useful for society and essential for the country's well-being. All of these 'private' and 'social' conceptions of worthy citizenship could, and were, assimilated to the republican rhetoric of corruption (sinfulness, licentiousness, sloth, wastefulness). However, they could also be linked to more political conceptions of virtue, giving it slightly new flavours, and adding (new) beneficial character traits and motivations to ideas of the active and vigilant citizen and the wise ruler.

Generally speaking, although the virtuous citizen assumed new roles, it is a mistake to claim that the Americans dismissed the language of *civic* virtue. They certainly kept the language - although some of the theoretical understandings of the role of this virtue changed considerably. 'Virtue', indeed, had its possible meanings multiplied and could be employed in all the new settings of civil society where individuals legitimately pursued their happiness, with due regard to the interests and rights of others.¹¹¹ But to claim that the discourse of virtue in America was no longer civic would amount to denying the existence of ideals of individual dispositions and activities that were related to the preservation of common liberty in a direct sense, *vis-à-vis* authoritative political levels, and which stressed activity, involvement, identification, and judgement. Such ideals were still prominent, although they were given different emphases and attributed different roles in politics by different writers.

It is possible to distinguish a number of different positions. Jefferson and Paine were the most optimistic, in the sense that their conceptions of citizenship required and expected the possibility of widespread political participation, exercised in constitutional deliberations with relatively short intervals; possibly in a demanding system of local ward democracy (Jefferson); and certainly in the constant, vigilant scrutiny and judgement of elected leaders. Jefferson's hope was to maximise the "direct action" of citizens, to find a way to tap "the voice of the whole people" as "expressed, discussed, and decided by the common reason of the society", and to "cherish the spirit of our people, and keep alive their attention" lest that their governors "shall all become wolves". Both he and Paine had quite classical conceptions of patriotic willingness to sacrifice in wars and revolutions, and both accepted, Machiavellian style, the need for occasional *tumult*. Jefferson and Paine were joined in these ways by several of the more democratic Anti-Federalists, although most of

111. Vetterli & Bryner (1987:79).

them were much more pessimistic and backward-looking, stressing the incompatibility of civic virtue with the new world.¹¹²

Hamilton, at the other extreme, represented a conservative, statist position, which reduced civic virtue to a circumscribed, rhetorically accepted, highly mediated popular sovereignty. Civic virtue was only indirectly and weakly connected with the election of rulers. Apart from his lip service to the "spirit of patriotism" and "regard for those rights and liberties, in defence of which the people have fought and suffered" in the great national exertion of patriotic resistance to English rule, Hamilton's civic virtue primarily consisted in law-abidingness, passive obedience, and habitual allegiance. Moreover, like Hume, he accepted the social usefulness of luxury and conspicuous consumption.¹¹³

Adams and Madison occupied middle positions. Adams was given to moods of Puritan despair and generally much less trusting of the capacities of ordinary people than Jefferson.¹¹⁴ But although government to him was very much a way to control and repair the moral failings of fallen men, he also thought that a republican government - including the monarchical type that he personally favoured - required a measure of virtue, indeed was doomed without it. Much of the virtue he had in mind had connotations of Christian morality and labour ethics.¹¹⁵ However, religious morality, important in itself, was also the "only foundation of a free Constitution". Such "pure virtue" could not be "inspired into our people in a greater measure, than they have it now", they will continue to "change their rulers, and the forms of government, but they will not obtain a lasting liberty". Adams was talking, here, of a popular capacity, aided by education of the lower classes, not only to obedience and moral conduct, but also to show good judgement in the exercise of political rights, once such rights had been granted.¹¹⁶

Madison, finally, developed a doctrine of the necessity to *economise* with virtue. We already noted his friendly disagreement with Jefferson's assessment of the people's capacity to constantly renew the virtue and good judgement which was exer-

112. Jefferson to John Taylor, May 28, 1816; Jefferson to Samuel Kercheval, July 12, 1816, *Life and Writings* (pp.670,676); see also Jefferson to Edward Carrington, January 16, 1787, *Papers* (11:48-49).

113. Hamilton, Speech to the New York State Ratifying Convention, *Papers* (5:44).

114. E.g., Adams, *Defence*, III, Letter 6, Eighth Argument (pp.325-34); Adams to Jefferson, May 19, 1821, "Must We, before We take our departure from this grand and beautifull World, surrender all our hopes of the progress of Society", *The Adams-Jefferson Letters*, III (p.572).

115. In one letter, Adams describes a "general emulation ... which causes good humous, sociability, good manners, and good morals in general. That elevation of sentiment, inspired by such a government, makes the common people brave and enterprising. That ambition which is inspired by it, makes them sober, industrious, and frugal", cited from Lerner (1979:25).

116. Adams to Zabatiel Adams, 21 June , 1776, *Adams Family Correspondence* (2:21). But cp. Diggins (1986:69-99).

cised in the debate on the constitution. Yet, as we shall see in the section below, it is inaccurate to present Madison's inter-constitutional periods as totally void of civic virtue, or, as claimed by Ball, characterised by the transformation of virtue from a civic disposition into a systemic property.¹¹⁷ Not only was institutional organisation of government positively aimed at recruiting the most virtuous leaders, Madison was also unwilling, unlike Hamilton and Hume, to assume the possibility of a self-moving constitutional machinery without virtuous citizens. Madisonian pluralism and institutional checks and balances were certainly main components in the eclipse of republicanism, but their originator was more cautious. He did believe, although in a more limited manner than Jefferson, that the "manly spirit" which was peculiar to America was somehow part of the "health of the soul", and those habits of independence, which were produced by republican political forms.¹¹⁸ In a dialogue with an (imagined) "Anti-republican", Madison maintained that "the people ought to be enlightened, to be awakened, to be united, that after establishing a government they should watch over it, as well as obey it". Most clearly, speaking to the Virginia ratifying convention, and criticising those who went to far in their political distrust, he announced that,

I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks - no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them¹¹⁹

The American tradition is often seen as marking a radical shift in the meaning of virtue, particularly when compared to classical Machiavellian conceptions.¹²⁰ Evidently, in light of the new vocabularies that were added to republican virtue discourse, there is some truth in this. The scope and content of virtue was widened. Yet, as regards the conception of *civic* virtue, the contrast is easily exaggerated. Differences regarded the *degree* of demand on the individual, rather than any substantially different requirement.

117. See Ackerman's notion of 'normal politics' and general discussion (Ackerman uses the term 'economy of virtue')(1991:165-99). Ball (1988:72).

118. Madison in the National Gazette, March 5, 1792, *Papers* (14:245).

119. Speech to the Virginia Convention, June 20, 1788; Madison, in National Gazette, December 20, 1792, *Papers* (11:163, 14:426).

120. E.g., Ball (1988:47-79); Diggins (1986); Pangle (1988:62-111); Vetterli & Bryner (1987: 1-88).

Some alleged contrasts can be dismissed relatively quickly, such as the familiar notion that classical virtue involved an 'Aristotelian' conception of moral growth as its defining concern, whereas, (only) in America, virtue had become 'instrumental'.¹²¹ Also, if men like Madison, Adams, and some Anti-Federalists were afraid of the conduct of the masses, this should only remind us of other more conservative voices employing republican arguments, i.e., Aristotle, Cicero, or Guicciardini. And if attention is drawn to the 'realism' of the principal founders, who were much in agreement in their low estimate of man's capacity to transcend his lower impulses, it is worth recalling that classical writers with few exceptions were quite sanguine, and aware of the difficulty of creating and maintaining the institutions and cultural forms conducive to civic virtue. If anything, some of the puritan moralists were more optimistic, in their appeal to the golden rule.¹²² The qualitative difference only lies in the (lack of) willingness to adopt these measures, in denying their necessity, or in claiming the existence of (institutional) alternatives. Concluding the discussion of civic virtue so far, two further points may be noted:

First, the significance of the increasing emphasis of (Christian) private virtue must be properly understood. We should not forget that Aristotle, Cicero, Machiavelli, and the latter's British successors all recognised the importance of decent private conduct, including honesty in business transactions, the willingness to mutual assistance in everyday affairs, and particularly respect for law. A potential, more substantive difference lies in the tendency of some Puritans to regard private and social, particular congregational life as the *originator* of such virtue. Here, as also often in the Scottish moralists who were alienated from the remote, *English* state,¹²³ the locus of socialisation (or corruption) became the institutions and habits of more immediate circles of civil society. Identification with the larger, national community was essentially derived. Yet, this idea of civil society-centred civic virtue was not the dominant one. And it certainly coexisted, in America as in Scotland, with more classical conceptions of good citizenship as dependent upon, and directed towards, the (federal) state, with its laws and political institutions. Another possible difference, but only to Machiavelli, concerns the *relation* between Christian and moral virtue and the demands of politics.¹²⁴ Unlike Machiavelli, the Founders saw no conflict between the claims of politics and the virtues of Christian moral-

121. E.g., Pangle (1988:55-56,73); Sinopoli (1992:10-11,143,147).

122. Vetterli & Bryner (1987:74).

123. "The Scottish Enlightenment was dedicated to discovering methods by which a provincial culture could create forms of social virtue without having to rely on republican political institutions unavailable to a province that was, like America, uncomfortable with its status" (Kloppenbergh 1987:17); cp. Vetterli & Bryner (1987:52). In Scotland as well as America the family, the church, and the local community had to compete with the new conceptions of a 'civil' economic sphere.

124. Vetterli & Bryner (1987:51-52).

ity.¹²⁵ They were two faces to the same coin, and to many writers the former crucially required and served to extend the force of the latter. Again, the conflict between morality and politics has been exaggerated. English Machiavellians like Harrington denied this part of the Master's teaching. On the other hand, the Christian natural law persuasions of the founders did not prevent them from conceptualising statesmanship as a secular activity involving painful compromise, the severity of justice rather than charity, the complexity of political prudence, and the horror and occasional necessity of waging war.

A second contrast, often made,¹²⁶ concerns the shift from martial, unruly, glory-seeking, narrow-minded civic virtue, to a cooler, deliberate, and *moderate* modern understanding. The impact of Montesquieu's distinction between violent, selfless *virtue* in ancient republics and the modern monarchical principle of *moderation* was considerable, not least in Madison's writings. Yet, much of this contrast reflects Enlightenment prejudices about the rude and uncivilised virtue of *les anciens* which hardly captures the diversity of classical ideals. In fact, moderation, one of the classical cardinal virtues, had come to refer to different things:

When moderation referred to a distaste for the pursuit of individual glory and recognition, there was indeed a contrast to some of the Greek and Renaissance ideals (but not to Cicero). On the other hand, neither Greek writers nor Machiavelli had any place for a glory which was not aimed at politically useful ends, such as the founding of states. Machiavelli, we saw, recognised that such satisfactions were only for the few. On the other hand, it is difficult to overlook the concern with honour and distinction of figures like Hamilton or, in a different way, Madison or Jefferson, both of whom were obsessed with their political testaments.¹²⁷

Moderation also referred, in Madison, to a willingness to compromise, to accept that different interests must be accommodated, and that the unwavering pursuit of an inflexible ideal whatever the costs must be abandoned. This appeal to moderation, also derived from Montesquieu and Hume, was held up as a contrast to classical republican zeal and 'enthusiasm'. However, it had its real historical background in, and substantial bite against, the religious intolerance of European monarchies. In fact, Machiavelli's famous rejection of a *via mezzo* for the virtuous prince was coupled, we recall, with a dialectical understanding of reasoned compromise

125. Kloppenberg (1987:14).

126. E.g., Pangle (1988:89ff).

127. E.g., Hamilton's reference to "love of fame" as a possible motive that "a virtuous man might have for making sacrifice", cited in McKee (1934:xx). See also Jefferson's speech to his constituency, after returning from his second presidency, which had "obtained for me the approbation of my country". Having acted "on the theatre of public life", he now awaited the "sentence" of the people, Jefferson to the Inhabitants of Albemarle County, Virginia, April 3, 1809; cp. Jefferson to Thomas Jefferson Randolph, November 24, 1808, *Life and Writings* (pp.593,596-97).

between social forces which, in its spirit, was not so unlike Madisonian constitutionalism.

A more obvious contrast regarded the 'moral sociology' of moderation. As we saw in the previous chapter, a main Enlightenment conceptualisation of moderation as a character trait of ordinary citizens associated it with non-political, principally commercial activity. Where commercialism and riches in the classical tradition had been associated with untrustworthiness and lack of moderation or 'temperance', in the original sense of mastery of sensual appetites, it now came to denote regularity, calculation, cooling of passion, and self-control. But again Enlightenment cross-purposes stand in the way of remembering that Machiavelli's acceptance of *tumulti* (with which, we recall, he revolutionised the republican tradition) was linked to distinctions between more or less *civilised* and disruptive political conflicts.

To the extent that this new conception of moderation as an essentially non-political virtue succeeded in presenting popular involvement in politics as the problem, and retreat to the market place and passive law-abiding as the solution, the main conceptual alternatives were shaped accordingly. Thus, men like Ferguson and Jefferson could dispute the causal correctness of Montesquieu's and Hume's analysis. Or they could point out the dangers of political cultures exclusively based on urban and courtly vanity and conspicuous consumption, as compared, not to martial fervour, but to the stout reliability of rural freeholders. Or, alternatively, they could accept as necessary the hazards and unruliness of untamed popular vigilance.

But interestingly, in Jefferson there was also a different voice. Here, in a political conception of civil society which may be seen as an extension of Ferguson's views, moderation began to be transformed into an active, and democratic *civic* virtue of a new kind, to which the general public might aspire. Moderation and restraint was again associated with popular participation in politics, in two related ways. One was as a possible predicate of the good citizen, through proper education, guidance, and experience with free government, including participation in juries. Another concerned the outcome of reasoned, peaceful debate and *polite* restraint in the exchange of political opinions. A crucial distinction was made by Jefferson, between such forms of participation which characterised the unruly mobs of the European cities, and those which could be found among more civilised American citizens.¹²⁸ Although also classical citizens were occasionally depicted as capable of sound political judgement, Jefferson introduced a distinctly modern association of civic virtue with a type of political reflection and debate which required

128. E.g., Jefferson to Thomas Jefferson Randolph, November 24, 1808, *Life and Writings* (pp.591-92,676,711); Jefferson to Samuel Kercheval, July 12, 1816; Jeffer-

education, impartiality, and political tolerance. However, by raising the demands on the good democratic citizen in this manner, he also further paved the way for conservative voices that remained unconvinced of such popular capacities.

8. The Madisonian Science of Government

The title of this section reflects the commonly accepted premise that Madison's proposals in the field of constitutional architecture were designed to take any remaining human, civic virtue element out of politics. As already suggested, I do not think Madison went quite so far in the Humean direction. But his views did challenge what he saw as an unrealistic, even reckless *degree of* reliance on democratic participation and popular capacity for political judgement in the programs of the Anti-Federalists. Moreover, his proposals were aimed at demonstrating the feasibility of a new scheme of government which required less civic virtue to function, in part because of its superior ability to channel and embody such virtue institutionally.

Madison had a strong hand in Philadelphia because of the difficulty of staying within the confines of the small republic argument. But as the great constitutional argument started to shift towards a national framework, also among the critics of the constitution, Madison's various proposals for what he saw as a new 'republicanism' met a set of principled rejoinders which, while largely ineffectual, came to define the terms of a remaining principled distrust of the new political order which never quite disappeared in America. We shall look at it as it surfaces, above all, in the last writer whose work we consider, Alexis de Tocqueville.

8.1. Consolidated Union

Different Anti-Federalists, as we saw, opposed the constitution on the grounds that a large republic would be unable to cater for local diversity effectively and justly, would be incapable of generating voluntary allegiance and civic identification, and would jeopardise those local, participatory institutions, or that simple, rural or religious life, which were the essential seedbeds of civic virtue. However, the Federalist case was rhetorically potent, because it started from the assumption that a consolidated, national union was necessary:

The difficulty of the small republic arguments was that many Anti-Federalists in fact did share the essentials of the very diagnosis with which Federalists argued that American liberty had to be pursued in a large state. Most people understood that a national political format was required to address some of the most pertinent dangers to this liberty, as these were hammered home in the *Federalist Papers*: the need to have a common defence against external enemies, the need to regulate in-

son to Monsieur A. Cray, October 31, 1823, *Life and Writings* (pp.591-92,676,711); Jefferson to Adams, October 28, 1813, *The Adams-Jefferson Letters*, II (pp.387-92).

ternal commerce and provide against state protectionist barriers and eventually their possible military rivalry, the need to facilitate the possibility of a degree (to Hamilton a high degree) of central taxation and spending on infrastructure and administration, and the need to deal with problems of law and order between and inside the states.

There were a few Anti-Federalists who denied the need for consolidation, maintaining that the dangers to liberty were exaggerated, and that wars were unlikely, given America's happy situation. To the extent there was a problem, some maintained, unwittingly undermining a main Anti-Federalist point about the local conditions of civic virtue, what was needed was more popular determination and patriotic zeal to help the young confederacy find its feet. Patriotic allegiance, it could be claimed, would be based on the common interests that *did* exist, such as commercial interdependence. But as most Anti-Federalists came to accept the need for 'consolidation', the discussion shifted to questions of 'how much' and 'how'. The new point of departure of the Anti-Federalist critique, as shared in principle by Jefferson, was the danger of tyranny, epitomised in the infamous 'necessary and proper' clause of the constitution, and elaborated in the detailed criticisms of the Philadelphia document which are found in virtually every Anti-Federalist tract. The full spirit and content of Anti-Federalist fears are well represented by *Brutus*' indictment of the federal legislative which was, capable, using this clause, of so exercising its power, as

to annihilate all the state governments, and reduce this country into a single government. And if they may do it, it is pretty certain that they will [as] ... the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, invested with power, are ever disposed to increase it (...) [W]hat this constitution wants of being a complete government, possessed of perfect legislative, judicial, and executive powers ... it will necessarily acquire in its exercise and operation¹²⁹

These sentiments, however, also signalled a certain ambiguity concerning power among many Anti-Federalists. On the one hand, they would grant, more or less explicitly, that some consolidation was necessary and that the original system was "defective and wanted amendment".¹³⁰ On the other hand, while accepting that

129. *Brutus* (2.9.9). See also *Mason's* representative, brief summary of perceived dangers of all the new branches of government, the two houses, the president and vice president, and the judiciary (2.2.2-9).

130. *Luther Martin* (2.4.44); cp. *Brutus* (2.9.23, 2.9.65) and *The Federal Farmer* (2.8.75).

"rulers are invested with powers" in order to "protect the rights and promote the happiness of the people", they tended to be unwilling to grant much power at all to the national level, although a federal government, as stressed by the Federalists, was patently in need of authority and powers in order to function at all, for instance as a final arbitrator in state controversies. At the same time, Anti-Federalists' power *realism* (the quasi-Hobbesian flavour of the above was typical) was not extended to the state level, where power, it was thought, would be checked by tighter and closer popular accountability.¹³¹

Madison essentially gave three responses to the problem of power and national consolidation, each of which is outlined below. All were premised on certain assumptions about power and liberty: On the one hand, power and 'energy' was needed for a government, federal or central, to do good in the first place, and the difficulty of generating *enough* power was as big as restraining it. On the other hand, once power *was* consolidated, unless proper measures were taken to prevent it, wherever there was "an interest and power to do wrong, wrong will be generally done". A science of government had to determine the necessary measure of power in different offices and at different jurisdictional *levels*, and provide the means to check its abuse *and* its erosion in these places. Moreover, in doing so, it had to dispense with the prejudice that only centralised power could be abused.¹³²

8.2. Divided Sovereignty, Subsidiarity

Madison's first response was directed towards fears of the kind voiced by *Brutus*, that power would be *gradually* augmented at the national centre and drift away from the states, indeed that such a thing as divided sovereignty was inherently unstable¹³³, so that "the two concurrent powers cannot exist long together; the one will destroy the other".¹³⁴ A principled denial of dividing sovereignty was obviously unstable, once it was granted that the original confederation could only be prepared by granting *some* measure of overriding power to the centre, of however limited form and extent. Madison responded with what would be a doctrine of 'subsidiarity', had the term been available to him. Thus, the jurisdiction of the union

is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their

131. *Brutus* (2.3.9, 2.9.102).

132. Madison to Jefferson, October 17, 1788, *Republic of Letters*, I (p.565); *Federalist* no. 37 (p.243). See Storing (1981:29), and Hamilton's sustained argument in *Federalist* no. 23.

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134. *George Mason* (5.17).

care to all those othe objects which can be seperately provided for, will retain their due authority and activity¹³⁵

Anti-Federalists who had come to accept some measure of consolidation could not but accept this *principle*. The ensuing debate came to centre on accusations of artful designs to provide for future centralisation of power; attacks on many specific powers as unnecessary and dangerous; and the need for states to retain the ability to keep house alone. Finally, the question of divided sovereignty did not only concern *which* specific powers should properly be lodged where, but also *how* to construct a division of power so as to adequately maintain a future federal equilibrium.¹³⁶

Federalist no. 41-44 contain Madison's detailed justification of specific powers vested in the national government. But Madison also directed a more principled point against the states making a fetish of historically contingent local sovereignties. Once the necessity of some consolidation was granted, could it be that "the precious blood of thousands" had been spilt, not in order that

the people of America should enjoy peace, liberty, and safety, but that the governments of the individual states, that particular municipal establishments, might enjoy a certain power and be arrayed with certain dignities and attributes of sovereignty.

In 1787, Madison had little patience with Anti-Federalist fears, noting the "tendency continually betraying itself in the members [the states] to despoil the general government of its authorities, with a very ineffectual capacity in the latter to defend itself against the encroachments". Madison's constitutional ideas on the division of federal and state authority eventually carried the day. However, later in his life, in the great struggle waged by Jefferson and himself against Hamilton's plans for national consolidation in the fields of taxation, finance, banking, and foreign policy, Madison was to learn that Anti-Federalist reservations had not been entirely unfounded.¹³⁷

8.2. Enlarging the 'Sphere'

A second part of Madison's response, and the most famous one, effectively started by denying and reversing the most important aspect of the Anti-Federalist assumption of the danger of power. Individual rights - of property and religious consciousness - were much more likely to be jeopardised at the state level, and much

135. *Federalist* no. 14 (p.143).

136. *Federal Farmer* (2.8.8-10); *a [Pensylvanian] Farmer* (3.14.6-21); Storing (1981:33-37).

137. *Federalist* no. 45 (p.293). On the disagreement with Hamilton, see Koch (1950:103-14,127-34).

better protected in a consolidated representative government. To make this point, Madison developed his theory of political pluralism.

His principal point was that the danger of tyranny stemmed from majority rule as such, and not just from the sinister combination of big states into national majorities, infringing on the autonomy of smaller states. Madison challenged the traditional view, held by a great many Anti-Federalists as well as by Jefferson, that majorities of active citizens were the best and indeed the only safeguard of individual rights. To Madison, rights were also *popularly* contested and threatened. In particular the rights of conspicuous minorities (of wealth or religious persuasion) were likely to be violated because of the envy, greed, or religious intolerance of unjust majorities. Anti-Federalists, Madison pointed out, relied on a flawed equation of small size with homogeneity of "possessions, ... opinions, and ... passions".¹³⁸

The solution was to "extend the sphere" of government, to adopt a new system of representation, and to recognise the great virtue of what was at any rate a functional necessity. The following central passage summarises Madison's reasoning:

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.¹³⁹

With this idea, Madison made two crucial moves. First, he initiated a radical transformation of the Enlightenment discourse on civil society. For important political purposes, man was to be taken as he was generally found. Whereas, in Ferguson, Smith, Jefferson, and many Anti-Federalists, a battle was fought over whether one or the other (political, social, or economic) human activity was more civilising, Madison's position entailed that civil society should be no longer primar-

138. *Federalist* no. 10 (p.126; Madison to Jefferson, October 24, 1787, *Republic of Letters* (p.501)).

139. *Federalist* no. 10 (p.127). In a shrewd rhetorical move, Madison managed to claim that *this* frame of government was truly *republican*, and that the bad press the term had suffered could be accounted for by its faulty association with classical *democratic* forms (*Federalist* no. 14 (p.141); no. 39 (pp.254-55); cp. Jefferson to John Taylor, May 28, 1816 (pp.669-70)).

ily conceptualised as "a teacher, as a molder of character", but rather as "a regulator of conduct".¹⁴⁰

Madison did not *reject* the old language. Although more sanguine than Jefferson, he *also* appealed to the value of agriculture and rural life,¹⁴¹ and, as we noted, expected sufficient degrees of virtue in the general population. Yet, quite apart from one-sided later receptions of his political theory, his new conception of civil society had become the more prominent. Indeed, it had come to constitute an answer to a problem which also he recognised: that the means to educate citizens in a large commercial republic were increasingly scarce, and that he, unlike Jefferson, was unprepared to do anything serious about this fact.

The second move implied in Madison's new pluralism was to challenge the main stream Anti-Federalist conception of representation. In a republican perspective, this move was more positive, in the sense that it employed a language of virtue and the common good. The theme was endlessly reiterated in Anti-Federalist tracts. Often, representation was a second best solution, to be used where direct democracy was impracticable. To the extent it was necessary, it ought to enable the full diversity and relative strength of opinions and interests to be reflected in the institutions of representation. Elections should be frequent, there ought to be many representatives, these representatives should be strictly and 'substantially' accountable to their constituencies, and the creation of an elevated class of professional politicians should be avoided.¹⁴²

Against the strict 'mirror' view of representation, Madison argued that representation was a positive opportunity, rather than a necessary evil. Under the right circumstances, representation could serve to

refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations ... [T]he public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves

The right circumstances were a large republic, where the number of representatives was large enough to ensure against the corrupt "cabals of a few", yet small enough to "avoid the confusion and intemperance of a multitude", whose "passion never fails to wrest the scepter from reason". Also, where each representative had to court the favour of a numerically large constituency "it will be more difficult for unworthy

140. Storing (1981:47).

141. Madison, in National Gazette, March 5, 1792, *Papers* (14:244-46).

142. E.g., *Cato* (2.6.38); *The Federal Farmer* (2.8.95-98); *Brutus* (2.9.14); Melancton Smith (6.12.8-25). See also Kramnick (1987:44f).

candidates to practice with success the vicious arts by which elections are too often carried", and the people, exercising its suffrage would bestow their electoral favours on "men who possess the most attractive merit and the most diffusive and established characters".¹⁴³

In fact, Madison's argument was complex. An important part of it appealed to the existence and likely mobilisation of the few with "enlightened views and virtuous sentiments". But also other, systemic mechanisms favoured the common good. First of all, the mechanism of representation and accountability induced representatives to take the interests of their constituencies into account both on prudential grounds, as they would want to be re-elected, and because of a more ideal sense "of honour, of favour, of esteem ... which ... is some pledge for grateful and benevolent returns". Secondly, and deeper, Madison denied the premise that virtuous representation, in the name of the common good, entailed *virtual* representation. Apart from the quality of specific representatives, and provided that the number of representatives was kept low, preventing "the infirmities incident to collective meetings of the people", the mechanism itself facilitated those deliberative processes in the legislature which enabled this body to move beyond the fixed mandates on which Anti-Federalists would insist, but which Madison regarded as too narrow and parochial to combine into a common interest. Finally, the pluralism of factions and interest in civil society, which tended to check each other, preventing "the concert of ... the secret wishes of an unjust and interested majority", also created a space of opportunity for a more ideal politics, with the most virtuous representatives taking the lead.¹⁴⁴

Despite Madison's new pluralist conception of civil society it is still unfair to accuse him of giving up virtue altogether. Virtue had to be there in a wisely choosing people, in decent representatives, and in the features of the system, as it worked to exclude sinister and local concerns from the legislative process. Even so, Anti-Federalist reservations were obviously relevant. From whence would any residual popular virtue come, in a commercial capitalist, privatist society with nothing to sustain such virtue, particularly if *popular* politics and elections were reduced to the competition of economic interest groups? And without such popular virtue and institutional outlets for it, could one really trust the idea of a filtering device, inducing representatives to seek the broader, informed general view, rather than bowing to the meanest common denominator of mass prejudice on the one hand, and secret, corporate lobbying on the other?

143. *Federalist* no. 10 (pp.126-27); no. 55 (p.336).

144. *Federalist* no. 10 (p.128); no. 57 (p.344); no. 58 (p.351). On the "natural aristocracy" see Kramnick (1987:41f). See also, e.g., *Melancton Smith* (6.12.16); Adams to Jefferson, August [14?], 1813, Jefferson to John Adams, October 28, 1813, *Adams-Jefferson Letters*, II (pp.365-66,388).

8.3. 'Internal Controls': From Mixed to Complex Government

If the Anti-Federalists were sceptical of the small size and limited accountability of the representative body and feared the capacity of the people, through this body, to act as a counter weight against the designs of executive power, they also particularly disliked the institutional organisation of the central government. The general view was that good government, apart from being accountable, had to be simple and transparent. It ought to be easy to detect the location of responsibility for poor legislation and abused power. More specifically, it was a prevalent view that the popular element, i.e., a single, large representative chamber ought to be strong relative to the executive. This was the *simple government* which was fit for an egalitarian, democratic society of freeholders.¹⁴⁵

However, as some Anti-Federalists recognised,¹⁴⁶ different orders of men were going to continue to exist, and in this situation it was best to revert to the older republican idea of a *mixed government*, consisting of three 'natural' orders of the many, the few, and the one. In such a mixed government, however, it was understood that the popular element ought to be strong, relative to the 'few' of the natural aristocracy. Also some Anti-Federalists, but not all, favoured a strong president who was to be the trusted guardian of the general interest. Adams, presenting a more conservative version of the mixed government argument, had persuaded himself that the constitution managed to approximate this idea. Of course, in America there was no specific property requirement or other way to create a true upper house, and Adams' 'balance', it turned out, consisted of different classes of men being placed by the same mechanisms in the same representative body. By contrast, the typical Anti-Federalist view was that the plan "does not present a well balanced government", because this body was too small to prevent aristocratic and oligarchic tendencies among the elected.¹⁴⁷

Secondly, with reference to the authority of Montesquieu, simplicity and transparency was also associated with a clear and 'rational' division of legislative, executive, and judicial functions. Also in this respect, the complex system of interlocking powers was seen to render the proposed new constitution deficient.¹⁴⁸

Against these criticisms, Madison developed his doctrine of complex government, the core of which is found in *Federalist* no. 51. He started from the same realist analysis of interest, power, and human nature as in no. 10. Although it was to

145. "The highest responsibility is to be attained, in a simple structure of government ... If you complicate the plan by various orders, the people will be perplexed and divided in their sentiments about the source of abuses or misconduct, some will impute it to the senate, others to the house of representatives, and so on"; *Centinel* (2.7.9). The following discussion follows Storing (1981:53-63). See also Kramnick (1987:47-45).

146. A particularly clear example is *Melancton Smith* (6.12.17-18).

147. Adams, *Defence*, Vol. I, Letter 53 (p.363). *The Federal Farmer* (2.8.30, 2.8.97).

148. E.g., *Gerry* (2.1.2); *Brutus* (2.9.203-4).

be hoped and expected that a number of adequately virtuous leaders would be elected and controlled by the good sense of the electorate, it was still the case that, while "dependence on the people" remained "the primary control on the government ... experience has taught mankind the necessity of auxiliary precautions". This system,

of supplying, by opposite and rival interests, the defects of better motives [is] ... particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other - that the private interests of every individual may be a sentinel over the public rights

Anti-Federalists too were in favour of governmental checks. But their notion of this mechanism was different, more traditionally influenced by Montesquieu. Just as different orders of men had to check each other's abuses of power (the people's representatives being trusted the most), so different government functions should counterbalance each other. However, they should do so by being *separate*, thus rendering it impossible for the holders of one type of power to enhance it with the help of another type. Madison's view was different. Although it was "evident that each department should have a will of its own; and ... have as little agency as possible in the appointment of the members of the other", Madison saw the best guarantee against abuse of power in any part of the government in enabling each of them to "resist encroachments of the others", by letting each *partake* in the functions and powers of other parts. It was "by their mutual relations" that the various departments had "the means of keeping each other in their proper places".¹⁴⁹

Madison's invention of governmental checks and balances, which not only enabled "the government to control the governed" but also "oblige[d] it to control itself", was a land mark in constitutional and political theory, as yet another way to economise on virtue, particularly the virtue of rulers. By itself, and abstracting from other aspects of Madison's vision, it was also one more nail in the republican coffin. A parallel to the received Mandeville-Smith idea of an economy of egoism and vice, which rendered politics all but redundant, Madison came to represent a vision of government as a machine of power, with complicated levers and springs, a perpetual motion machine which needed no (civic) input beyond the ever-present beastliness of men.¹⁵⁰

Anti-Federalists remained sceptical about this overly theoretical idea.¹⁵¹ But they also suggested a different point. Madison clearly assumed that the particular

149. *Federalist* no. 51 (pp.318-20).

150. *Federalist* no. 51 (p.320).

151. *Patrick Henry* (5.6.14) argued that the proposed measures were "checks on paper ... inefficient and nugatory".

complexity of the American constitution, as a result of political science, had nothing sacredly democratic or republican about it *per se*, apart from its utilitarian superiority, which he thought time would "recommend ... to ... sincere and considerate friends of republican government". The legitimacy of the House of Representatives or the Senate was derived from the (anticipated) constitutional expression of the will of the people - the will to adopt this particular experiment with "a judicious modification and mixture of the *federal principle*", as it were. As pointed out by Ackerman, no particular institution embodied the Sovereignty of the People as such. Madison saw no problem in this. But Anti-Federalists suggested that this complicated governmental design was likely to alienate and confuse American citizens, whose allegiance could not merely be expected to depend on the passive enjoyment of a well-functioning machinery that delivered the goods.¹⁵² This type of concern was also manifest in the discussion over whether or not to have a *Bill of Rights* in the new republic.

8.4. A Bill of Rights and Constitutional Patriotism

A main reason for the adoption of the new constitution was the Federalist agreement to add to it a Bill of Rights. The need for a Bill of Rights was a recurrent theme in most of the major Anti-Federalist tracts. The eventual concession on this core point was a clever strategic move, making it virtually impossible for Anti-Federalists to shift the framework of discussion back to the level of the state. The debate is too complicated to be reviewed in any detail, but a few key differences of opinion between Madison and some Anti-Federalists are illuminating.

Standard Anti-Federalist themes included the need for constitutional protection of the personal liberties, including freedom of consciousness and religion, and the important right to trial by jury. The core of the Anti-Federalist fear was their anticipation of the new federal Leviathan which, despite artful divisions of sovereignty, was likely to overstep its bounds. Although the rights in question were those of individuals, and while a Bill of Rights was seen to delimit the exact degree and nature of power that was alienated by individuals by the social compact, it was also typically associated with, and discussed in conjunction with, the rights of a *people*, in particular the populations of single states, to "reserve all their powers not expressly delegated", in particular in view of the dangerously general federal powers entailed by the new constitution.¹⁵³ 'Powers' could refer to the individual executive right of nature against any government, but also, as by assumed implication, to the collective exercise of self-government in states. In the latter sense, a Bill of Rights, while pertaining to individual legal subjects, was very much regarded as a state tool to resist central encroachments on the particular interests and lo-

152. *Federalist* no. 51 (pp.321-22); Ackerman (1991:181-86).

153. *The Federal Farmer* (2.8.196).

cally specific (e.g., religious) habits of different parts of the Union. Hence also the stress on political rights, adequate representation, security against standing (federal) armies, liberty of the (local) press, and jury trial (protection against the unresponsive federal system of justice).¹⁵⁴

Madison's views on the matter corresponded to his ideas of pluralism. His main point, which struck a blow against some of his contemporaries, was the "importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part". The danger to individual liberty did not only, or even primarily, arise from a tyrannical state, but more often from democratic majorities. The large republic was to cure democracy from *democratic* ills. Thus, to the extent that Anti-Federalists thought a Bill of Rights was principally needed in a large, federal republic, he thought that they were falsely assuming individual rights to be safer in the states, because protected by vigilant popular rule.¹⁵⁵

But Madison's scepticism of democratic majorities did not divide the political camps so neatly. Hamilton was only one of several Federalists who asked what use there was of a Bill of Rights in a government where all powers emanated from the people, implying that abuses could not take place where "in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations". The crude belief that individual rights could not be jeopardised where the people had given its collective consent, was denounced, on the other hand, by Anti-Federalists like *Agrippa*. Even in a "government by ourselves ... the sober and industrious ... should be protected from the rapacity and violence of the vicious and idle". To this purpose, a Bill of Rights could "set forth the purposes for which the compact is made, and ... secure the minority against the usurpation and tyranny of the majority".¹⁵⁶

In fact, Madison was far from complacent about individual liberty. But he saw the chief danger in the "mutability of the laws of the States", proposing, for this reason, an additional amendment during the Bill of Rights debate which expressly declared that no *state* should violate a series of rights, particularly the rights of consciousness. State intolerance, he told Jefferson, might obstruct an enlightened, authoritative definition of "the rights of consciousness", which were likely to "be narrowed much more than they are likely to be by an assumed power".¹⁵⁷

154. For a central statement, see *The Federal Farmer* (2.8.19-20; 2.8.196-203). Also *Centinel* (2.7.36-44). On the general debate, see Storing (1981:64-70).

155. *Federalist* no. 51 (p.321); cp. Madison to Jefferson, October 17, 1788, *Republic of Letters*, I (p.564). See Banning (1988:126-30).

156. *Agrippa* (4.6.73).

157. Koch (1966:31); Madison to Jefferson, October 24, 1787; October 17, 1788, *Republic of Letters*, I (pp.501,564).

Madison had a point here. But Anti-Federalists convincingly argued that political danger was increased simply by virtue of the accumulation of legislative power at the centre, so that "the greater the portion of political freedom in a form of government the greater the necessity of a bill of rights". To *Brutus*, as people in the forming of state constitutions had wished "that such declarations should make a part of their government" it was "the more astonishing, that this grand security ... is not to be found in this [the federal] constitution". A *Delegate Who Has Caught Cold* deplored the absence in some states of clearly stated rights guarantees, yet regarded this as "additional reason" for a federal Bill of Rights.¹⁵⁸

At a deeper level, Madison's political realism prevented him from placing much confidence in the effective safe guard of a Bill of Rights in the first place. As he confided to Jefferson, "experience proves the inefficacy of a Bill of Rights on those occasions when its controul is most needed. Repeated violations of these parchment barriers have been committed in every State". This argument was more important than the formal constitutional point that powers not expressly delegated remained "reserved by the manner in which the federal powers are granted".¹⁵⁹

However, the general world view of the Anti-Federalists also made *them* regard a Bill of Rights as a fragile and incomplete guarantee. However, the attempt ought to be made, not least in view of the vague all-purpose provisions of the new federal constitution. Eventually, Madison came to champion a Bill of Rights, in part because it was "anxiously desired by others", but also because it could "be of use". This was to some degree a concession to Jefferson. The latter had noted that weak or insufficiently liberal guarantees were better than no guarantees, that the unclear and general character of some of the constitutional provisions rendered the 'reserved rights' argument useless, and that a codified text, despite its lack of real potency, was at any rate a helpful authoritative reference for the identification of abuses of power, whatever their location and origin. Madison, in fact, conceded that while it was generally the case "that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter". Here, he granted, a Bill of Rights would be in order.¹⁶⁰

In light of the weak, often theoretical and formal arguments produced against a Bill of Rights, its champions may have detected a degree of bad faith in their opponents. The scepticism of the likes of Hamilton was no doubt tied to fears that the document could be used by states or individuals to "distract attention from the business of doing the things that have to be done" to further the rights, happiness,

158. *Brutus* (2.9.25); *A Delegate Who Has Caught Cold* (5.9.14). *A [Maryland] Farmer* (5.1.15).

159. Madison to Jefferson, October 17, 1788, *Republic of Letters*, I (p.564).

160. Koch (1950:56); Jefferson to Madison, 15 March 1789; Madison to Jefferson, October 17, 1788 (*Republic of Letters*, I (pp.564-65,587-88)).

and natural prosperity which were the purposes of the union in the first place. As noted by Storing, this argument could have been decisively met with the rejoinder that the great purpose could only be realised with the ultimate support of the people, and that a Bill of Rights served to mobilise and maintain this patriotism, and to give it the right direction, reminding the people what they had fought for, and should fight for still. Madison's version of this view was modest in its hope that "political truths declared in that solemn manner ... as they become incorporated with the national sentiment, counteract the impulses of interest and passion". To *The Federal Farmer*, a Bill of Rights might,

give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot. If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book. What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people, and have their assent

A Bill of Rights could inspire to civic virtue and popular allegiance in a way that the complicated details of the constitution could not. It could remind individuals of the rational content of their patriotism, "be the first lesson of young citizens", "sustain the dignity of their being", inspire "the envy and admiration of all Europe", and promote "considerable emigration". It enabled the republic to return to its sacred beginnings in common acts of deliberate remembrance:

Men ... do not remain free, merely because they are entitled to natural and unalienable rights ... because their ancestors once got together and enumerated them on paper, but because, by repeated negotiations and declarations, all parties are brought to realize them, and ... to believe them to be sacred¹⁶¹

9. The Eclipse of American Republicanism

According to Storing, the Anti-Federalist project (or projects) failed to reconcile contradictory aspirations:

They did not fail to see the opportunity for American nationhood that the Federalists seized so gloriously, but they could not join in grasping it. They doubted; they held back; they urged second thoughts (...) The Anti-Federalists were committed to both union and the states; to both the

161. Madison to Jefferson, October 17, 1788, *The Republic of Letters*, III (p.565); *The Federal Farmer* (2.8.197); *A Delegate Who Has Caught Cold* (5.19.16).

great American republic and the small, self-governing community; to both commerce and civic virtue; to both private gain and public good¹⁶²

The Federalist side 'won' the debate, in the sense that its authors were willing, even enthusiastic, to adopt a framework of politics which presupposed as inevitable and desirable, a new political reality of nation-wide commerce, administrative, legislative, judicial, and executive centralisation and homogenisation, even America's rise to the status of a world power. The Federalists were also willing to contemplate, in a constructive, rather than nostalgically lamenting fashion, that civic virtue could not be expected to emerge in the quantities presupposed by some, more classical authors, and that additional means had to be invented to secure liberty in a large state. Anti-Federalist positions, by contrast, were unconstructive, in the sense that few confronted their republican preconceptions with the consequences of their own growing acceptance of the inevitability of the Union. No new syntheses were attempted.

Even so, the constitutional aftermath showed that Anti-Federalists fears were not unfounded. Madison and Jefferson lived to see the early beginnings of nineteenth century corporate capitalism, the rise of a national bank, and other Hamiltonian schemes about which they had voiced so many reservations. As presidents, they fought battles against Hamilton's Federalist Party which were, in the long run, not only unsuccessful, but often unrealistically backward-looking in their assumptions about political economy and the role of the state. Also, both of the two were forced by circumstance to revise substantially their ideas about taxation, foreign policy, and public finance.¹⁶³ Eventually, it was Hamilton's schemes of administrative centralisation and modernisation which facilitated whatever degree of capitalist regulation, economic redistribution, and welfare state integration, which came to exist in America - not Jefferson's ideals of an egalitarian freeholder's democracy.¹⁶⁴

While, in many ways, the Anti-Federalists were even more unrealistic about America's future, they did make crucial points. Although no feasible solutions were offered, Anti-Federalists "had reasons, and the reasons had weight". One set of reasons consisted in profound doubts that *any* political architecture, however ingenious its checks and balances, could exist without a substantial degree of civic virtue, or, alternatively, could be made to rely on a residual pool of virtue of obscure and postulated origin.¹⁶⁵

Also, while the need for centralisation and political enlargement was eventually granted, Anti-Federalists continued to stress dangers which were ignored by Madison's subsidiarity and countervailing factions arguments. If Madison's republican problematic was the constitution of *libertas* through the large, federal union, Anti-

162. Storing (1981:6).

163. Koch (1950:212-59).

164. Kapstein (1997).

Federalists pointed to the many new dangers to *libertas* of an unaccountable, remote elite of power welders with oligarchic ambitions, equipped with immense new authorities. They would stress, in manners that were not *only* parochial and egoistic, that many liberties had to be constituted and secured locally. They claimed that no adequate account had been made of how to generate and focus a *national* political identification, which could combine and transcend local differences and create adequate motivations to allegiance - and not merely the passive and habitual acquiescence of happy subjects.

Jefferson remained true to his sophisticated statement of the radical constitutional self-government theme, which was prominent also among Anti-Federalists, i.e., his belief that 'the earth belongs to the living'. Whatever the force of Madison's theoretical and practical refutation, the latter's position and cautious provisions for constitutional innovation were arguably too conservative. Constitutional revisions were soon necessary, given the new economical, social, and political circumstances of corporate monopoly, civil war, slave emancipation, and economic depression. Yet, such revision were not facilitated by broad constitutional debates, but through the remote and undemocratic institution of judicial review, subject to the contingent quality of particular supreme justices.¹⁶⁶

Madison's democracy-sceptical temper was less adverse to the republican tradition than sometimes believed. That tradition, we have seen, always also had its more conservative voices, and even Machiavelli's praise of *tumulti* was qualified, and linked to a relatively low opinion of the capacities of the common man. If Jefferson's populism often lacked this darker republican aspect, Madison may have erred in a Humean direction by failing to realise just how much the cat was out of the bag in democratic America. With Jefferson, he championed civic (self) improvement through education. But he was unwilling to contemplate truly democratic solutions to a democratic predicament, i.e., the creation and maintenance of some sort of participatory political culture.

We examined at some length the manners in which the languages of virtue and legitimate human activity underwent a process of diversification. To some extent, new ideals coexisted with, as well as deepened and widened available conceptions of the good citizen and the common good. But the ambiguities and tensions of each vocabulary could also point in uncivic directions. Thus, while new conceptions of individualism and inalienable natural rights were not originally in conflict with republican conceptions of citizenship, this state of affairs did not last. In a certain sense, it is probably the case that "liberalism ... was the outcome of the search for a

165. Storing (1981:6).

166. Since then, the rather conservative institution of judicial review has been praised by several liberal American theorists who postulate, a connection between its deliberations and popular processes of mobilisation and legitimation, e.g., Macedo (1990); Ackerman (1991).

rights theory, not the cause of it", if by 'liberalism', here, we have in mind doctrines which are individualist in a theoretically 'fundamentalist' manner:¹⁶⁷

First, 'inalienable rights' were eventually capable of being disassociated from conceptions of moral duty, Christian ideas of personhood and divine intention, and Scottish conceptions of innate moral sense and natural jurisprudence. The next centuries saw the rise of a truly 'possessive' individualist ideology in America which was tied to radical ideas of self-ownership, just acquisition, and transfer of property, but not necessarily to any right of the poor to survive. Quite unlike those of Madison, let alone Jefferson, these doctrines were functionally tailored to a new type of *laissez faire* society. Here, 'self-interest' could lose connotations of concern with one's own moral character, and become an argument against the rationality, or the realistic anticipation, of public-regarding dispositions and behaviour. This, in turn, was facilitated by a new political economy, selectively sampled from Smith, and systematised by Ricardo, the British utilitarians, and Spencer, which viewed naked self-interest as a necessary motivating force, and which saw the common good as an evolving product of unintended consequences, rendering virtue redundant. To this economic liberalism or libertarianism, the state of nature metaphor could represent a vision of the market without a regulator state, rather than a pre-civil state of anarchy without common liberty. The state, here, was a mere prudential device, put in place by self-sufficient, free contractors for the sake of the enforcement of contract.¹⁶⁸

Secondly, by contrast to the crude psychological reductionism of this capitalist ideology, the 'other' liberal individualism,¹⁶⁹ which derived from Locke's moral rationalism and the Enlightenment value of autonomy, contained a different potential. In Jefferson, individualism could be linked, via the appreciation of moral and political complexity and man's fallen nature, to a conception of collective self-government which was both a privilege and a duty. Granted by a remote deity, it required the employment of every man's moral agency and capacity for reason, to define along with those others which belonged, at any one time, to 'the living', the best possible way to order collective affairs. This morally infused populism did not disappear in America. Yet, the idea of basing political morality on collectively self-imposed obligation could eventually become married to a rationalist reconstruction of political jurisprudence, an impulse which we now associate with philosophers like Rawls and Dworkin. Moreover, in America's professionalized political world, the value of individual autonomy was soon more likely to assume private forms. The importance of independence and individual choice became conceptualised in connection with a variety of cultural, religious, and aesthetic pursuits, i.e., the radical American affirmation of the right to find one's own peculiar mode of happiness. In

167. Haakonson (1991).

168. Kloppenberg (1987:19,27-29); Hont & Ignatieff (1983); Bellamy (1992:9-21).

169. For the distinction, see Dunn (1993b:35-36).

the nineteenth century, this became an anti-political impulse, in the transcendentalist, principled privatism of Emerson and Thoreau.¹⁷⁰

Finally, the language of religious individualism, which was momentarily fused with Anti-Federalist republicanism, changed also. In America, religion came to mean different things. Its radical potential surfaced in Lincoln, in the rhetoric of nineteenth century labour leaders, and in the civil rights movements of the sixties. More often, it became part of America's (ethnic) pluralism, as a vehicle of segmented group identities and belonging. As such, it served and may still serve as a source of local moral integration, constituting a brake on competitive individualism. But another, recently more visible ideological tendency, articulated by spokesmen of the Bible Belt *Moral Majority*, takes religious virtue in different, fundamentalist directions, which stress strict private morality, intolerance of multi-ethnicity and cultural pluralism, respect for authority, and a political program, not of toleration and religious freedom, but of school prayer, anti-abortion, and 'moral' political office. In the neo-conservative Christian revival, the old schism between commercialism and religious virtue, of how to "follow Jesus with your pockets full", largely disappeared. Protestant Christianity, capable, at times, of generating social indignation and guilt, could also conceptualise one's duty to God and neighbours as a council for leaving these neighbours alone to pursue their necessarily individual temporal salvation, recognising economic rewards as the product of individual desert, and hardship as self-inflicted.¹⁷¹

The thread of American republicanism ends here. This is not to say that no republican manifestations might be traced in American thought since then. Albert Lincoln, to take a prominent example, employed republican arguments in his appeal to national unity after the Civil War. In this century, republican themes may be found in writers from John Dewey to Robert Dahl. However, the most interesting and pro-foundly innovating modern republican observer was not American, although America was his subject of inquiry.

170. Thoreau, *Walden* (pp.212-21); Diggins (1986:192-229); Kateb (1989); Rosenblum (1987).

171. Bellah et al (1985:219-49); Diggins (1986:334-36); Marsden (1990:388-89).

CHAPTER 6:

TOCQUEVILLE: REPUBLICANISM IN DEMOCRATIC SOCIETY

1. Introduction

The last pages of this particular history book of republican thought belong to Alexis de Tocqueville. His work is highly important for a number of reasons. Several of the points he made may be read as a critique of the federalist assumptions that allowed men like Madison to believe they had invented a more viable new republicanism, more realistically suitable for a new age, with its new men, and new democratic dangers. Many of these assumptions, in Tocqueville's eyes, seemed dangerously mistaken. Indeed, his reasons for admiring America and believing in its ability to secure a new democratically constituted liberty were altogether different from those of Madison. Tocqueville's vision was important because he shared many of the fears and premonitions of the more conservative founders and even deepened their conceptions of the dangers of the new democratic civil society. Yet, he managed to employ these fears to develop a distinctly modern, pluralist, and forward-looking republican analysis. We might say, on the one hand, that Tocqueville dismissed Rousseau's version of republican *libertas* and republican solutions as historically irrelevant in terms of their material preconditions *and* as part of the very problem of liberty in a democratic world. On the other hand, he also implicitly dismissed the analyses of conservatives and moderates like Hume, Hamilton, Adams, and even Madison for failing to take seriously that the dangers of democratic society had to be met by guiding the democratic impetus to beneficial ends. I have no intention of offering a comprehensive discussion of Tocqueville's complex political thought.¹ Our focus is determined by our treatment of the American tradition and its failings, and by some of the themes of the liberal Enlightenment, to both of which Tocqueville may be seen to react.

2. Tocqueville's Fears and Hopes

Tocqueville was an aristocrat who looked with great concern upon the contemporary social and political condition of his native France. He and the remaining members of his class had witnessed revolutionary Jacobinism run its course and were still anxiously aware of anti-aristocratic sentiments. With the *ancien régime* a whole world of value had disappeared. This, to Tocqueville, was a world of stable, hierarchical social texture and settled tradition which facilitated social responsibility, cohesion and spontaneous solidarity across classes, as well as respect for learning and intellectual authority. At the time one indeed "found inequality and wretched-

1. A very good introduction to Tocqueville remains Lively (1962).

ness in society, but men's souls were not degraded thereby".²³ Tocqueville, however, was not a nostalgic, and, like Guizot, Constant, and de Stäel, with whose Protestant moral egalitarianism he identified,⁴ he was perfectly aware of the injustices of feudal society. Indeed, Tocqueville also shared with these *Doctrinaires*, who dominated political debate in the aftermath of the fall of Napoleon and who opposed attempts of the *ultra-royalists* to turn back the political clock, the notion that the revolution, despite its devastating consequences, signalled the beginning of a great new era. This development, analysed at length by Tocqueville in his last, unfinished work,⁵ was central to his thought from the beginning:

A great democratic revolution is taking place in our midst; everybody sees it, but by no means everybody judges it in the same way. Some ... supposing it an accident, hope that they can still check it

Tocqueville himself belonged to those who thought it "irresistible". Indeed,

the gradual progress of equality is something fated. The main features of this process are the following: it is universal and permanent, it is daily passing beyond human control, and every event and every man helps it along

This process, according to Tocqueville, "it would be neither desirable nor wise to try to combat".⁶

The main elements of this world-historical process which was unfolding in Europe, and which had begun earlier in the New World, were laid out in the long Introduction to the first volume of *Democracy*. The power bases and the administrative and economic structures of feudal society had been eroding since the birth of the cities, with early commercial capitalism and the possibility of escaping feudal tenure. The market economy introduced a division of labour and the possibility of diversified consumption in the new middle class, which became a competitor to the traditional nobility. A quest was provoked, led by the new group of lawyers, for legal regularity and equality, as "men's relations with each other became more numerous and complicated". The church became a new avenue of upward mobility, while Protestant religion taught universal equality before God. Secular learning and the arts became a fountain of new powers and wealth and constituted evidence of "the natural greatness of man", while printing and regular post facilitated the diffusion

2. *Democracy in America*, I: Introduction (p.14).

4. See Siedentop (1994:20-40).

5. E.g., "the Revolution introduced fewer innovations than has been generally supposed (...) it ... was the mere natural result of very long labours, the sudden and violent termination of a task which had successively engaged ten generations of men" (Tocqueville, *The Ancien Régime*, I,5).

6. *Democracy*, I: Introduction; II: Preface (pp.9,12,417-18).

of knowledge. The rise of the commons to political power was initiated by the relatively democratic municipal institutions, and furthered by monarchs "at pains to level everyone below the throne".⁷

All these material, technological, and intellectual elements of equality of conditions were associated with two equally inevitable developments, both of which in their several manifestations were to occupy Tocqueville's thought throughout his life. One was the gradual development of a *democratic culture*, with individuals considering themselves to be of equal worth and deserving of the same social status. The second, which was a dual outcome of the weakening and eventual destruction of local nobility and, later, of the inherent logic of democratic politics, was a movement towards *administrative centralisation and bureaucratisation*.

If Tocqueville thought these developments were inevitable, their happy conclusion was not. He did not share any of the great liberal Enlightenment narratives of progress and rationalisation. As against state of nature theory and natural rights, Tocqueville and the French liberals regarded equal rights, despite their conformity to God's intentions, as the product of a historical and geographically variable social condition, rather than as ahistorical categories. Against the individualist idea of the political community as a body of rational, natural individuals, associated through a static relation of vertical, representative consent and trust, Tocqueville stressed this relation as a potentially dangerous structural weakness of democratic society, which had to be remedied by some form of mediating device between citizens and rulers.

By contrast to the progress theories of the Scottish Enlightenment, which linked the development of social, legal, political, and even cultural forms to modes of subsistence, Tocqueville *added* to this materialist and economical focus a sociological concern with democratic beliefs and norms whose content were bound to have important effects on both political culture and political institutions. We recall that, while for instance Adam Smith was ambivalent about modern alienation, vanity, and over-specialisation, he shared with Hume and Montesquieu a relatively optimistic idea of market man, busy with his commercial pursuits, who would habitually submit to established authority, given the right constitutional design (Hume). By contrast, Tocqueville placed much more emphasis on the importance for both stable political institutions *and* for economic prosperity of the contingent and volatile character of political culture, legitimation, and *moers* in the population, thus adding a dynamic element to the latter concept which was not there in the work of Montesquieu.

Finally, in contrast to optimistic *philosophes* such as Condorcet, whose belief in the possibility of free and rational action he certainly shared, Tocqueville also stressed the ambiguity of Enlightenment and the many ways that social and moral

7. Tocqueville, *Democracy*, I: Introduction (pp. 9-15); Zetterholm (1988).

equality might not facilitate an increase in social rationality, fellow feeling, and spontaneous moral conduct, but might instead bring new forms of intolerance, egoism, and unreason.

These contrasts explain why Tocqueville, in the face of what he saw as inevitable, was haunted by "a kind of religious dread" as he beheld the rise of democracy. Democratic society, the outcome of social levelling, was both a great danger and a historical possibility - the solemn background for momentous political choice. In *Democracy*, Tocqueville started by noting how in France and elsewhere social levelling had done away with traditional authority without installing respect for law in its place; it had created a potentially tyrannical, unchecked, and bureaucratic political power in the state; it had led to envy and fear between classes; and it entailed loss of belief, virtue, and devotion without diminishing prejudice, ignorance, and egotism. Such ills, along with disrespect for learning, social conformism, apathy, lack of political will, and disappearance of any focus of national unity and solidarity, all constituted the grave agenda that modern countries were facing. While Tocqueville accepted that what once was had gone forever, indeed that it would be against the will of God to try to bring it back, he also realised that God had left no instructions to ensure success. Completely new terms of analysis were required to understand this new predicament, hence Tocqueville's famous "new political science ... for a world itself new". Yet, although he stressed the dangers of equality⁸ and thought that while "our fate is in our hands ... soon it may pass beyond control", he also believed that possibilities existed of finding "elements ... mitigating its vices" and bringing out "its natural good points". What was needed was to effect "those changes in laws, ideas, customs, and mores" which were needed to secure the potential benefits of democracy. "After the battle comes the lawgiver", and the duty of politicians and commentators like Tocqueville himself was,

to educate democracy; to put ... new life into its beliefs; to purify its mores; to control its actions; gradually to substitute understanding of statecraft for present inexperience and knowledge of its true interests for blind instincts; to adapt government to the needs of time and place; and to modify it as men and circumstances require⁹

Tocqueville stood apart from his contemporaries, including much more optimistic liberals like Constant, by virtue of his radical understanding of the ambiguity of democracy. What was needed, and what needed *nurturing* and could not be assumed to develop with social levelling as such, were the right *type* of democratic mores, i.e., mores based on social pluralism, public debate, and cooperative citizenship. Also Constant had discussed the danger of centralisation, and had added

8. Lively (1962:240f).

9. Tocqueville, *Democracy*, I: Preface to the Twelfth Edition; Introduction (pp. xiv, 12-13).

to his praise of a British style representative government the need for an intermediary level of local administration, or what he called a "new federalism".¹⁰ Tocqueville added to this a darker analysis of the way that centralisation was positively furthered by features inherent in democracy which could only be countered by a political organisation of civil society, i.e., by the existence of associations. And he added a sustained analysis of a political civil society,¹¹ which may be seen to take up embryonic elements of Jefferson's and Ferguson's republicanism.

The reason for Tocqueville's hope that democracy's promise could be rescued was his discovery of America. Here, despite the fact that equality of condition had almost reached its limits, demonstrating the shape of things to come in Europe, and despite the fact that Tocqueville remained ambiguous about many things that he found on his and Beaumont's journey to The New World,¹² it seemed that each democratic predicament - each way that democracy generated threats to a new democratic liberty - had found benign solutions. While many of these were linked to the peculiar and happy geographical and economic circumstances of America which prevented their easy translation to European, and particularly to French conditions, Tocqueville made it clear that he "sought there lessons from which we might profit".¹³

The following section is about the particular flavour which Tocqueville gave to republican *libertas*, the supreme value that had to be protected from and realised through democracy. After this, to appreciate the answers, found by Tocqueville in America, we look at each of the most important dangers to liberty that he associated with democracy, dangers which were also promises. Finally, we turn to Tocqueville's solution, as found in the various elements of a politically conceptualised civil society.

3. Liberty

Tocqueville's liberty, never formally defined, was clearly republican. However, its very richness, its additional aristocratic and moral elements, and the distinct manner in which he linked negative and positive aspects, makes it necessary to look at it in some detail.¹⁴

10. Constant, *Principles of Politics*, 12.

11. Tocqueville occasionally used the term "political society" to refer to civil society in its political aspect, i.e., political culture or political, democratic mores (e.g., Tocqueville, *Democracy*, I:1,9 (p.290).

12. Some of which, he said, "saddens and chills me", tempting him to "regret that state of society which has ceased to be", and to "concentrate on the pleasure of contemplating" this state. Yet, "this pleasure arose from my weakness", i.e., as compared to "the Almighty ... whose gaze of necessity includes the whole of created things" (Tocqueville, *Democracy*, II:II,8, p.704).

13. Tocqueville, *Democracy*, I: Introduction (p.18).

14. Tocqueville's use of the concept is excellently and thoroughly analysed by Lively (1962: 8-22, 219-28).

Tocqueville's basic understanding of the liberty that he himself treasured above all other values, and whose precarious modern fate he analysed, was negative. As in Montesquieu and Machiavelli, the value of this liberty was associated with the possibility of enjoying a private sanctity from trespassings on oneself, one's family, one's "comfort" and "wealth", and with the subjective feeling of security in enjoying one's rights, whatever they be.¹⁵ Liberty was first of all the legal protection of reasonable areas of unimpeded private activity - as opposed to unreasonable license, or what Tocqueville often called "independence", which was unregulated by any authority. This, Tocqueville approvingly quoted Governor Winthrop for saying, would be "a *liberty* of a corrupt nature, which is affected by *men* and *beasts* to do what they list ... impatient of all restraint", as opposed to "a civil, a moral, a federal *liberty*, which is the proper end and object of *authority* ... a *liberty* for that which is *just* and *good* ... maintained in a way by *subjection* to *authority*".¹⁶ What the Americans had discovered was "a mature and thoughtful taste for freedom (...) Not disorderly passions drove it on; on the contrary, it proceeded hand in hand with a love of order and legality". Indeed, "[n]o one in the United States has pretended that, in a free country, a man has a right to do everything".¹⁷

However, Tocqueville certainly did not *equate* liberty with either security or authority. He made a point of noting that, although legal regularity and respect for law could only be had with a level of security, and although one of liberty's main fruits was the enjoyment of the former, a free society inevitably entailed a degree of tumult and conflict and the very quest for absolute security was a democratic disease that jeopardised liberty.¹⁸

Also, liberty was not the same as authority, in the sense of existence of authoritative rule of law ("pronouncements of the law ... categorical") and defined administrative powers. In particular, liberty was not simply equated with *popular* authority or collective, democratic sovereignty, although Tocqueville took some steps in this direction. Authority was certainly necessary for liberty, although in Europe some said that "to weaken authority ... is ... equivalent to establishing liberty". Instead, Tocqueville said, it was possible to keep authority and its beneficial effects while "diminishing" its influence, namely by "sharing authority". However, although Tocqueville here seems to move towards a Rousseauian idea of liberty as having a share in collective self-government (which, we remember, was only a part of Rousseau's view), it is important to note how his conception differed:¹⁹

15. Tocqueville, *Ancien Régime*, 15 (p.134). Also, Tocqueville spoke of the motivating power of "having some rights and being sure of the enjoyment of those rights", Tocqueville, *Democracy*, I:Introduction (p.14).

16. Tocqueville, *Democracy*, I:1,5 (pp.46,72).

17. Tocqueville, *Democracy*, I:1,5 (p.72).

18. Lively (1962:20-23).

19. Tocqueville, *Democracy*, I:1,5 (p.72).

Tocqueville, like Constant and other post-revolutionary liberals, was quite aware that collective decision-making and exercise of power, the 'liberty of the ancients', often jeopardised private liberty rights. Indeed the master theme in *Democracy* of equality threatening liberty was watered from the same fountains as Constant's distinction. But this did not prevent Tocqueville from still talking of liberty, not always with the prefix 'political', in the sense of participation in political self-government.²⁰ It was not just that Tocqueville confused liberty with (political) equality or occasionally forgot his own fears of majoritarianism. Indeed, Tocqueville cited Madison and Jefferson on their fear of the "tyranny of the legislature", and agreed that "[i]f ever freedom is lost in America, that will be due to the omnipotence of the majority".²¹

What may seem like an inconsistency in Tocqueville is really evidence that he bridged the neat distinction made by Constant.²² In an article written for Mill's *Westminster Review* and translated by the latter, Tocqueville unequivocally spoke of a man's liberty as "being entitled to be uncontrolled by his fellows in all that only concerns himself, and to regulate at his own will his destiny". This was the *just* and, as in Constant, "the modern ... notion of liberty". But Tocqueville also spoke at length, in *Democracy*, of liberty as rather more than a right to order one's own private affairs (whether they be they of business, conscience, or associational nature) - namely as a right to participate at different levels of political decision making. The two elements were joined in Tocqueville's depiction of the American self-understanding, and in his own mind, by the single principle (a "dogma") of a democratic sovereignty which derived all legitimate power - individual as well as collective - from the right and capacity of individual citizens to order their own affairs:

In all matters that concern himself [the citizen] alone he remains the master; he is free and owes an account of his actions to God alone. From this derives the maxim that the individual is the best and only judge of his own interest and that society has no right to direct his behaviour unless it feels harmed by him or ... needs his concurrence

But there were matters - "interests" was Tocqueville's constant term - which, while not "social" in the sense of pertaining to the interest of the whole of USA (Tocqueville mentioned taxation, infrastructure, education, and police), nevertheless involved the cooperative efforts of a group, i.e., a township or a county. Here, liberty to order one's own affairs translated to joint decision-making at the requisite

20. "Let us suppose that all the citizens take a part in the government and that each of them has an equal right to do so. Then ... men will be perfectly free because they are entirely equal", Tocqueville, *Democracy*, II:I,1 (p.504).

21. Tocqueville, *Democracy*, I:II,7 (p.260).

22. Cp. Lively's (1962:11,19) to my mind exaggerated association of Tocqueville's idea of negative liberty to that of Constant, a reading which renders Tocqueville's

level and, important to Tocqueville, to an elaborate system of control by division of administrative functions in the townships and by their performance by elected non-professionals. But the principle was the same, the township "taken as a whole" resembling "any other individual":

the organization of township and county ... everywhere depends on the same idea, viz., that each man is the best judge of his own interest and the best able to satisfy his private needs²³

Tocqueville's idea of liberty as 'sharing sovereignty', of how the American "society acts by and for itself", was not just Rousseau's concept of taking a part in and confirming the power that constrains oneself as much as everybody else, let alone the latter's ambition to have a maximum number of such rational laws regulate the people's path to virtue. In a manner that reminds us of the debate between Anti-Federalists and Federalists and what I termed the principle of subsidiarity, Tocqueville stressed the pluralism of different "local needs" leading to a variety of levels of popular sovereignty, legitimate legal diversity, and, of course, the danger of an unresponsive centralism. Also, with bite against Rousseau, he stressed that the will of the majority was rarely a general will. To believe that "in matters which only concern itself a nation cannot go beyond the bound of reason", and that the majority may thus always be entrusted was indeed "the language of a slave".²⁴

Tocqueville never seriously analysed the legitimate relation between the rule of majorities and the rights of individuals, let alone the even more complicated question of the natural boundaries between local, regional, and national jurisdictions and 'interests' - we recall that exactly how and where a national interest might override a local one was one of the most hotly debated political issues at the time of the Philadelphia Convention. He did, however, confront the question, eventually appealing to the constraints of natural law:

There is one law which has been made, or at least adopted, not by the majority of this or that people, but by the majority of all men. That law is justice. Justice therefore forms the boundary to each people's right (...) Consequently, when I refuse to obey an unjust law, I by no means deny

equation of liberty with political rights a simple confusion.

23. Tocqueville, *Democracy*, I:I,5 (pp.66-67,82), italics in original. Cp. these passages to the passages towards the end of the first volume of *Democracy*, where "sovereignty" as self-reliant choice is seen to structure every relation from that of a father to his child to that of the Union and the states (I:II,10, pp.396-7).

24. Tocqueville, *Democracy*, I:I,4-5; I:II,7 (pp.60,73,251). Tocqueville continued to ask what else a majority was "if not an individual with opinions, and usually with interest, contrary to those of another individual, called the minority" and, equally rhetorically, if "men, by joining together, [have] changed their character" (p.251).

the majority's right to give orders; I only appeal from the sovereignty of the people to the sovereignty of the human race²⁵

Tocqueville's departure from liberal contemporaries like Constant or Mill must be emphasised. A reason for his failure to confront the harm question may simply have been his belief that "[p]rovidence has given each individual the amount of reason necessary for him to look after himself in matters of his own exclusive concern", and that such self-reliance and adversity to having others decide for one's life was part of the same substantial value and spirit of liberty, as that "communal freedom" which "springs up" among collectives of men, spontaneously gathering to decide their common affairs. With his attention to decentralisation, Tocqueville resisted the liberal impulse of Constant to confine the value of unimpaired choice and self-direction to a defined private realm. The liberty of the ancients remained important *along* with that of the moderns - the former in the straight forward manner of the capacity of smaller groups of individuals to act free from the constraints of larger ones. Tocqueville as a political thinker was prepared to accept that the same human impulse, when manifested in different spheres, might occasionally be divided against itself.²⁶

But there was more to Tocqueville's idea of liberty than this. Inside the conceptual boundaries of liberty as unimpaired activity, extended by Tocqueville to the level of groups, the value had connotations different from those of Constant. Tocqueville's liberty was not just about being 'left alone', but about being left alone so as to make active, assertive, and valuable choices. His understanding of the restricted *liberties* which existed for members of his own class before the democratic age comes to mind here. Tocqueville valued these liberties in part for what we may call aesthetic reasons. They facilitated the leisured enquiry of free spirits like himself, and thus were conducive to cultural pluralism, refinement, and innovation, all things he saw jeopardised by the conformity and intellectual mediocrity which was typical of democracy. And secondly, they facilitated the capacity of individuals to act with intention and will, intervening in the world, changing the circumstances of human societies and moving them in more desirable directions. This too he hoped to transfer to modern democratic liberty - the only liberty which was also just and conforming to divine intentions - although occasionally he despaired at citizens "frightened of their own free will" who did not recognise that, inside the "predes-

25. Tocqueville, *Democracy*, I:II,7 (250-51). However, much like Jefferson and Paine, Tocqueville also stressed that, given "the nature of a country and of antecedent events on political constitutions" it would be a "great misfortune if liberty were bound always and in all places to have the same features", and that, although there could "be no social state without political and civil rights" it was not necessary that "such rights should be uniform" (Tocqueville, *Democracy*, I:II,9-10, pp.315,365).

26. Tocqueville, *Democracy*, I:I,5; I:II,10 (pp.62,397).

tinued circle around each man beyond which he cannot pass" man was yet "strong and free", a recognition on which democratic societies more than previous societies had to rely.²⁷

Most importantly, and this sets Tocqueville apart from Mill,²⁸ the deepest level of the meaning of liberty was its value in itself. By exercising free, responsible choice, individually and with others, by "thinking, feeling, and acting for themselves", individuals realise a potential for maturity and true humanity rather than "perpetual childhood". Men, said Tocqueville, "must walk in freedom, responsible for their acts".²⁹ In Tocqueville's language we recognise the Renaissance *vir virtutis*, the truly manly man, now in possession of a set of more reflective virtues, i.e., "the virile candor and manly independence of thought". But Tocqueville's notion of virtue as self-direction was also linked to a Christian and moral vocabulary about the value of free discovery of what is right. Noting that American "[r]eligion regards civil liberty as a noble exercise of men's faculties, the world of politics being a sphere intended by the creator for the free play of intelligence", Tocqueville spoke his own opinion. Indeed, he "espouse[d] the cause of human liberty as the source of all moral greatness". In a letter, cited by Lively, Tocqueville made the point clearly,

Freedom is, in truth a *sacred* thing. There is only one thing that better deserves the name: that is virtue. But then what is virtue if not the *free* choice of what is good

Religion helped individuals to recognise that as "all citizens are equal in the sight of God" it followed that all citizens are "equal before the law". And Tocqueville also equated virtue with the free recognition, based on individual experience with self-government, of the reasonableness of mutual respect for rights:

Next to virtue as a general idea, nothing ... is so beautiful as that of rights, and indeed the two ideas are mingled. The idea of rights is nothing but the conception of virtue applied to the world of politics³⁰

Tocqueville's association of liberty to the exercise of social duty and an objective morality of rights was closer to Locke than to Mill, but the specific link to political autonomy rather reminds us of Jefferson.

The several value aspects of Tocqueville's liberty are placed in perspective as we analyse the way they were jeopardised in democratic society. To anticipate, the extension of negative liberty to independent thought and political independence considerably widens the standard repertoire of threats to liberty. They involved, in Tocqueville, not only the dangers of traditional despotism and tyranny, including

27. Tocqueville, *Democracy*, II:II,7-8 (pp.701,705).

28. Lively (1962:12-14).

29. Tocqueville, *Democracy*, I:I,5; II:II,6 (pp.92,692-94).

30. Tocqueville, *Democracy*, I:I,Introduction,2; I:II,6 (pp.16,47,237-38,258); Lively

the political tyranny of the majority. Liberty was also threatened by men's own weakness of will, i.e., the constant temptation not to think for themselves, and not to take the trouble to decide their own affairs, all, as we shall see, helped along by a benevolently paternalist central state and a suffocating public opinion.

Tocqueville's notion of unfreedom as slavery to one's unmanly desire for ease and comfort, and of freedom as moral and intellectual independence, looks a little like a late version of Pocock's civic humanism.³¹ But although such independence and self-reliance was an independent normative concern in Tocqueville, and one which he hoped could be reinvigorated in a democratic society, it is difficult to overlook its association with a new version of the old instrumental republican figure. Over and above the independent value of thinking for oneself and taking one's turn in the exercise of political liberty, both belong in the dialectic of a free way of life or "the spirit of liberty". The tangible benefits from the habitual exercise of political liberty and independent reflection might after all seem insignificant, and the inconvenience and restraint suffered by not having a say in matters great and small, or not having a mind of one's own, might seem negligible, compared to the (foregone) opportunity to pursue material comforts and ease of mind. This was part of the lure of 'soft despotism'. Indeed, although Tocqueville did associate political rights with non-trivial individual and collective benefits and protections, the call on citizens to be active might seem to be based principally on a moral interest in autonomy and humanity. But Tocqueville, in a typical republican move, added that manly independence of thought and action, while valuable in itself and constitutive of great hopes of a dignified democratic version of the best elements of aristocratic culture, was also straightforwardly necessary to preserve liberty in its most basic sense of inviolable individual rights. Only people who thought for themselves were capable of remaining virtuous enough to be good citizens, and the maintenance of structures of local political liberty and associational life, the most important formats of such citizenship, was the only bulwark against new forms of tyranny.³² "What good is it", Tocqueville asked,

if there is an authority always busy to see to the tranquil enjoyment of my pleasures and going ahead to brush all dangers away from my path without even giving me the trouble to think about it, if that authority ... is also the absolute master of my liberty and of my life

For an inhabitant of such a country, the

detachment from his own fate goes so far that if his own safety or that of his children is in danger, instead of trying to ward the peril off, he

(1962: 13).

31. But see Lively (1962:15-20).

32. Tocqueville, *Democracy*, I:I,5 (p.63).

crosses his arms and waits for the whole nation to come to his aid (...) When nations reach this point, either they must modify both laws and mores or they will perish, for the fount of public virtues has run dry; there are subjects still, but no citizens. I say that such nations are made ready for conquest³³

Although some individuals, unsusceptible to the intrinsic rewards of citizenship, might crave for the relative *de facto* security and circumscribed liberties of a monarchy, this option was no longer relevant. Indeed, Tocqueville warned that the stable traditions and moral texture of a feudal society had gone forever, and that an attempt to rely on a good prince would involve all the dangers of political Jacobinism.

Liberty was valuable for its own sake, and Tocqueville at times said that only those who *did* value it for its own sake, rather than for the fruits they might reap from its exercise, were capable of retaining it. Thus, in the *Ancien Régime*, he stated that

in the long run, liberty always yields to those who know how to preserve its comfort, independence, and often wealth; But (...) [t]hose who only value liberty for their sake have never preserved it long. It is the intrinsic attractions of freedom ... which have seized so strong a hold on the great champions of liberty throughout history; ... they loved the pleasure of being able to speak, to act, to breathe unrestrained, under the sole government of God and the laws. He who seeks freedom for anything but freedom's self is made to be a slave³⁴

Tocqueville loved liberty for its own sake himself and believed that all men had it in them to do so to. But his main motivational argument was different and typical of an established republican figure. The motivation to be free in the sense of the active, reflective, and cooperative aspect of *libertas* flowed from the everyday experience that this was the only reliable way to be sure of enjoying private rights in security: "Understanding its own interests, the people would appreciate that in order to enjoy the benefits of society one must shoulder its obligations". These benefits, again, consisted in "[e]ach man having some rights and being sure of the enjoyment of those rights". This was the heart of the "self-interest properly understood" and the rational patriotism which was the foundation of American public virtue.³⁵

Tocqueville thought of himself as a "liberal of a new kind".³⁶ His emphasis on individual autonomy, tolerance of diversity (indeed the independent value of diversity), intellectual liberty, and progress of the human mind, all certainly place him

33. Tocqueville, *Democracy*, I:1,5 (p.93-94).

34. Tocqueville, *Ancien Régime*, 15 (p.134).

35. Tocqueville, *Democracy*, I:1,Intro.; I:II,6; II:II,8 (pp.14,235-36,525-28).

in the company of many (Post) Enlightenment liberals. Siedentop, while noting that Tocqueville was much less hostile towards the imagery of "civic humanism" than Constant, still claims that Tocqueville shared the reservations of the former, inherited from Montesquieu, about 'ancient' liberty.³⁷ But before Tocqueville is put too squarely in the liberal camp, we remember the typical misunderstandings of classical republicanism of the Enlightenment, which also Tocqueville shared. *Democracy* is full of the old vocabulary and political cosmology of corruption, decay, and virtue, and artificiality, all to such an extent that the failure to read him as a republican seems odd. What Tocqueville saw as a 'new' idea of virtue, based on self-interest rightly understood and a culture of rights, and his idea of a corresponding 'new' patriotism, were not nearly as unprecedented as he thought himself. In reality, he demonstrated that liberal values, also under new conditions of egalitarian mass democracy, had to be protected by vigilant citizens who were virtuous in a rational, not self-denying manner, a manner that we have encountered before.

Tocqueville emphasised that the new threat to liberty was exactly that condition of equal, privatised, atomised citizenship which, in contract theory, utilitarianism, and Humean liberalism alike, was seen as liberty's core. And, finally, he managed to utilise those elements of the new liberal individualism which addressed the private and associational life of civil society and which gave moral and aesthetic substance to the otherwise somewhat vacuous language of individual rights. Tocqueville gave a distinctly political meaning to moral autonomy, religious piety, and even to capitalist pursuits. By infusing such substantial civic value into the liberal vocabulary of individuality, he emphasised that democratic rights would never be secure without virtue, that without it, democratic citizens were likely to use their rights to create new kinds of despotism that jeopardised each and every aspect of liberty along with its associated values. In stressing this, Tocqueville was certainly a 'new kind of liberal'. He was indeed a republican liberal.

4. Equality of Condition and the Spirit of Equality

The master idea of Tocqueville's analysis of democracy was the concepts of equality and equality of condition. By the latter, he partly referred to increasing degrees of material equality (he had in mind the new rising middle class, not the proletariat whose predicament Marx was to analyse, and of which, in Jacksonian America, he thought that there was no trace). He also had in mind social mobility, the lack of inherited positions and special political distinctions, and finally that "middling standard [which] has been established in America for all human knowledge".³⁸ Rousseau had aimed deliberately at such levelling and homogeneity, all for the sake of mutual recognition and solidarity in Spartan citizenship. By contrast,

36. Cited in Lively (1962:8).

37. Siedentop (1994:67-68).

Tocqueville had discovered a series of modern dangers that arose exactly, he believed, from steps taken towards the society that Rousseau had in mind. Some of the substantial values that Rousseau attached to republican liberty were unsavoury to Tocqueville in the first place, indeed part of the problem of society which he came to analyse. But Tocqueville also developed a new analysis of the republican maladies that arose from that very condition of relative social and political equality, which Rousseau and others before him had regarded as the condition for a free republic. The following is a brief discussion of the most important of these new dangers to liberty.

First of all, the very *impulse of equality*, that "passion ... [which] seeps into every corner of the human heart", was an ambiguous phenomenon in itself. Its inherent logic could lead towards liberty or to its opposite. So strong was the sentiment, Tocqueville claimed, that although most individuals naturally inclined towards liberty, its rewards were less immediately obvious. By contrast, equality "daily gives each man in the crowd a host of small pleasures". Hence, people would "want equality in freedom, and if they cannot have that, they still want equality in slavery", even if this meant putting up "with poverty, servitude, and barbarism".³⁹

There were indeed "only two ways of making equality prevail in the political sphere; rights must be given either to every citizen or to nobody". The latter, of course, was the Jacobin scenario, the outcome of the revolution which had nourished "a debased taste for equality, which leads the weak to want to drag the strong down to their level". The trouble with equality was envy, arising from the habit of social comparison, and particularly facilitated by democratic society which provided "the means for everybody to rise to the level of everybody else" at the same time that

the means are constantly proving inadequate in the hands of those using them (...) anything which in any way transcends the people seems an obstacle to their desires, and they are tired by the sight of any superiority, however legitimate

Such envy, essentially the same phenomenon which was analysed less dialectically by Rousseau as a problem of recognition, was facilitated by the disappearance of the stable hierarchies of feudal society. It was likely to turn into "delirium" and "blind surrender" for instance to a single dictator claiming to represent the general will, especially where, as in France, the social order had collapsed in a violent and sudden way, and where people had acquired a taste for social equality without having some experience with liberty and self-government.⁴⁰

38. Tocqueville, *Democracy*, I:1,3 (p.56).

39. Tocqueville, *Democracy*, II:II,2 (pp.505-6).

40. Tocqueville, *Democracy*, I:1,3; I:II,5; II:II,1 (pp. 56-57,198,505).

America, luckily, had been blessed with a peaceful revolution which centred on political rights and national liberation rather than social issues, had enjoyed a slowly developing tradition of local self-government in the eastern townships, a levelling rural economy, and the near absence of conspicuous material inequalities, let alone of an idle nobility. This might facilitate what Tocqueville described as a "manly confidence and ... reciprocal courtesy", and a "manly and legitimate passion for equality which rouses in all men a desire to be strong and respected". The latter in turn reflected a "natural bias towards free institutions" which democratic man also had, i.e., for equality as the equal political liberty of self-reliant citizens. Yet, this natural taste had to be nurtured, directed, and protected from many counter-vailing tendencies which were also the outcome of equality.⁴¹

5. Individualism

One of these dangers was the natural tendency in democracies towards what Tocqueville called *individualism*. This new phenomenon was "a calm and considered feeling which disposes each citizen to isolate himself from the mass of his fellows and withdraw into the circle of family and friends" where he "gladly leaves the greater society to look after itself". This feeling was distinct from "egoism", a "vice as old as the world", which denoted the "passionate and exaggerated love of self which leads a man to think of all things in terms of himself and to prefer himself to all". However, although individualism was "based on misguided judgment rather than depraved feeling" it "dam[ed] the spring of public virtues" and "finally merge[d] into egoism".⁴²

Individualism was produced by the disintegration of the many bonds of objective obligation and particularist loyalty inside and across classes in a local community, and also between generations living in the same place and station. The new social and geographical mobility of democratic (market) societies further prevented individuals from having many stable attachments. More generally, democracy produced a sense of being without obligations to anybody in particular, of not recognising anybody as more intelligent, worthy, or more knowledgeable than oneself, thus having a claim to be obeyed as an authority, and of self-sufficiency in the mundane affairs of business and work:

more and more people ... though neither rich nor powerful enough to have much hold over others, have gained or kept enough wealth and enough understanding to look after their own needs. Such folk owe no man anything and hardly expect anything from anybody. They form the habit of thinking of themselves in isolation and imagine that their whole destiny is in their own hands ... Each man is forever thrown back on

41. Tocqueville, *Democracy*, I:I,Introd,3; II:IV,1 (pp.14,57,667).

42. Tocqueville, *Democracy*, II:II,2 (pp.506-7).

himself alone, and there is danger that he may be shut up in the solitude of his own heart⁴³

This self-sufficiency and rights pride, however, was a dangerous illusion. This was evident in the case of many necessary cooperative ventures in civil society. And it was abundantly clear in the event of oppression, either as the violation of individual rights or as political tyranny. Both were easier where individuals were privatised, unaccustomed to combining their powers, and forgetful of the fact that the rights they enjoyed was the contingent outcome of political solidarity. Such forgetfulness was good for despotism which "sees the isolation of men as the best guarantee of its own permanence".⁴⁴

But also this tendency had a less sinister side which again was experienced by the Americans. Equality, although it destroyed particular obligations, also made it easier to sympathise with others, including distant others, identifying with their feelings and predicament:

When ranks are almost equal among a people, as all men think and feel in nearly the same manner, each instantaneously can judge the feelings of all others; he just casts a rapid glance at himself, and that is enough. So there is no misery that he cannot readily understand (...) In democratic ages men rarely sacrifice themselves for another, but they show a general compassion for all the human race⁴⁵

Also, the illusion of self-sufficiency could potentially be replaced by the more rational recognition of equal weakness, that "[n]o one among them [was] any longer strong enough to struggle alone with success, only the combination of the forces of all [was] able to guarantee liberty". This recognition, Tocqueville stressed, was not readily forthcoming. But the circumstances could be established that facilitated spontaneous cooperation by individuals who started from their own private interests and ended with a rational sense of solidarity, even habitual benevolence as a mixture of sympathy and enlightened self-interest:

The free institutions of the United States and the political rights enjoyed there provide a thousand continual reminders to every citizen that he lives in society

As soon as common affairs are treated in common, each man notices that he is not independent of his fellows as he used to suppose and that to get their help he must offer his help to them

43. Tocqueville, *Democracy*, II:I,2; II:II,2 (pp.435,507-8).

44. Tocqueville, *Democracy*, II:II,4 (p.509).

45. Tocqueville, *Democracy*, II:III,1 (p.564).

Indeed, a man could come to "care for his fellows and, in a sense ... find ... his self-interest in forgetting about himself". At every moment the American is reminded that "it is the duty as well as the interest of men to be useful to their fellows":

Having no particular reason to hate others, since he is neither their slave or their master, the American's heart easily inclines towards benevolence. At first it is of necessity that men attend to the public interest, afterward by choice. What had been calculation becomes instinct. By dint of working for the good of his fellow citizens, he in the end acquires a habit and taste for serving them⁴⁶

6. Materialism

Closely related to the danger of individualism was another standard vice of the republican tradition, namely *materialism*. Although he recognised the value of commerce and industry, Tocqueville did not share the complacent views of a Hamilton or a Hume on enrichment, consumption, and luxury. Tocqueville distinguished between a self-indulgent craving for luxury, characterised by "sumptuous depravity and startling corruption", found in aristocracies, and destructive of honest business and innovation, and on the other hand a more moderate democratic ambition to better one's condition. In the latter, "love of comfort appears as a tenacious, exclusive, and universal passion, but always a restrained one". This democratic materialism was fed by a spirit of competition, discontent and social envy, which created a culture of restless superficiality, and of "strange melancholy ... in the midst of abundance". Tocqueville greatly admired the "immense works carried through without difficulty by a nation which ... has no rich men" and was "struck by the innumerable multitude of little undertakings."⁴⁷

Yet, this in other ways beneficial "passion for physical pleasures" was potentially dangerous to liberty. It might "in the end ... shut out the rest of the world and sometimes come between the soul and God". The relation between materialism and Christian spirituality, which Tocqueville valued on independent grounds as well as a means to inculcate virtue, was a separate concern,⁴⁸ but Tocqueville also forcefully advanced a traditional republican fear that,

Intent on getting rich [people] do not notice the close connection between private fortunes and general prosperity. There is no need to drag the rights away from citizens of this type; they themselves voluntarily let them go. They find it a tiresome inconvenience to exercise political rights which distract them from industry. When required to elect representa-

46. Tocqueville, *Democracy*, I:I,3; II:II,4 (pp. 57,510-13). For Tocqueville's doctrine of self-interest, see Lawler (1998).

47. Tocqueville, *Democracy*, II:II,11,19 (pp.533,538,554).

48. Tocqueville, *Democracy*, II:II,15-16 (pp.542-47).

tives, to support authority by personal service, or to discuss public business together, they find they have no time

And if "at this critical moment, an able and ambitious man once gets power, he finds the way open for usurpations of every sort" and "one is left in astonishment at the small number of weak and unworthy hands into which a great people can fall".

However, again America had been peculiarly blessed, having "happily avoided all the reefs ... just charted".

An American will attend to his private business as if he were alone in the world; the moment afterward, he will be deep in public business as if he had forgotten his own

But the truth was that a heart could not be so divided between "the most selfish greed and ... the most lively patriotism":

One must suppose these urges to be united ... Americans ... are therefore by no means inclined to suppose that it is no business of theirs to meddle in public affairs. On the contrary, they think it their most important concern to secure a government which will allow them to get the good things they want and which will not stop their enjoying those they have in peace⁴⁹

7. Atomism and Patriotism

Individualist privatism and materialism may be distinguished in Tocqueville, at least analytically, from the related pathology of *atomism*. In an egalitarian society, quite apart from the propensity to cooperation or privatism, there would be a more general danger that moderns lost all sense of common identity and shared direction, certainly in a vast country such as the USA. Unlike Hamilton and Hume, Tocqueville was aware that habitual allegiance was not a simple matter of enjoying good government, let alone the beneficial effects of a distant federal politics. More was needed. On the other hand, in a way that challenged Rousseau and foreshadowed Durkheim, Tocqueville addressed the problem of the content of collective consciousness in a democratic society. Where customs, ancient values, and feudal loyalties had disappeared, again, each "man is forever thrown back on himself alone". Democracy makes men "forget their ancestors", and "clouds their view of their descendants and isolates them from their contemporaries". On the other hand, like Montesquieu, he was aware that nations could not "return to the feelings of their youth", "blind sacrifice and instinctive virtues" being "long past". Indeed, it was part of his doctrine of self-interest properly understood that in an age of equality,

49. Tocqueville, *Democracy*, II:II, 11, 14 (pp.532,540-41).

without some education and enlightenment, there was no "limit to the stupid excesses" into which the natural selfishness of men would lead them.⁵⁰

Tocqueville was aware that a democratic society required a social cement facilitating integration in a *particular* national community, and that most men "need to particularise and limit the objects of their affection in order to grasp them firmly and durably".⁵¹ He made a distinction between two types of patriotism, linking them to a broader concept of the content and degree of homogeneity required in a national political culture. In traditional societies, he claimed (continuing Montesquieu's mistaken reading of the ancients), patriotism was an

unpondering feeling that ties a man's heart to the place where he was born. This instinctive love is mingled with a taste for old habits, respect for ancestors, and memories of the past; those who feel it love their country as one loves one's father's house (...) [T]hey even find a certain attraction in living there in obedience ... [This patriotism] is itself a sort of religion; it does not reason, but believes, feels and acts

There was also, however,

another sort of patriotism more rational than that; less generous, perhaps less ardent, but more creative and more lasting, it is engendered by enlightenment, grows by the aid of laws and the exercise of rights, and in the end becomes, in a sense, mingled with personal interest. A man understands the influence which his country's well-being has on his own; he knows the law allows him to contribute to the production of this well-being, and he takes an interest in his country's prosperity, first as a thing useful to him and then as something he has created⁵²

In Tocqueville's analysis this rational, interest-based, and "reflective" patriotism was closely linked to, and produced by, participation in self-government, the "common man" having "understood the influence of the general prosperity on his own happiness" and having become "accustomed to regard that prosperity as his own work". In America, because of its history and federal structure, most powers and policy areas of immediate concern to the individual being centred at the level of the state and the township, patriotism had local origins, so that, for instance the "New Englander is attached to his township not so much because he was born there as because he sees the township as a free, strong corporation of which he is a part and which is worth the trouble to try to direct". This local patriotism, and its

50. Tocqueville, *Democracy*, I:II,6; II:II,1-2 (pp.236,508,527-28).

51. Tocqueville, *Fragments et notes inédites sur la révolution, Oeuvres Complètes* (ed. J.P. Mair), Paris, 1951- II,ii (p.346), cited from *Lively* (1962:203).

52. Tocqueville, *Democracy*, II:II,6 (pp.235-36).

corresponding "mores and habits of liberty" were then translated to a patriotism of the Union:

Public spirit in the Union is ... only a summing up of provincial patriotism. Every citizen of the United States may be said to transfer the concern inspired in him by his little republic into his love of the common motherland. In defending the Union, he is defending the increasing prosperity of his district [and] the right to direct its affairs⁵³

Still, Tocqueville's analysis of patriotism was not only an extension of self-interest pure and simple, as these passages may be read to indicate. Thus, in a long discussion of what kept the Union from breaking up and made the inhabitants of states feel allegiance to the larger nation, he noted that whereas the Union was

a vast body and somewhat vague as the object of patriotism ... the state ... represents a definite number of familiar things which are dear to those living there. It is identified with the soil, with the right of property, the family, memories of the past, activities of the present, and dreams of the future

There were some common interests in Union, and in the event that its very existence were threatened, Tocqueville believed "one will see a reaction spring up" in its favour. However, he had to "confess that I have no confidence in that calculated patriotism which is founded on interest and which a change of interest may destroy". Although common interest had to exist, at all levels of the polity as well as between them, more was needed, namely a "homogeneous civilisation", including "like feelings and similar opinions". What Tocqueville meant was not a culturalist or ethnic nationalism of the sort that was being formulated by some of his contemporaries. He had in mind a distinct American *political* culture, which made it "more of a united society" and "a single nation" than some European countries.⁵⁴

One element of this political culture was religion, but religion under an ecumenical "point of view", relating it to the political principle of universal equal rights. Also, all Americans agreed that "all legitimate powers have their origin in the people" and shared "the same ideas concerning freedom and equality ... the press, the right of association, juries, and the responsibilities of agents of authority". Apart from this culture of rights, Americans shared a set of "philosophical and moral opinions" pertaining to such things as the authority of reason, the capacity of each to understand his own best interest and rule himself. This political culture was a developing phenomenon, it slowly spread to all parts of the Union, mellowing "a mass of provincial prejudices", becoming ever "less exclusive", and it really only ex-

53. Tocqueville, *Democracy*, I:I,5,8; II:II,6 (pp.68,162,236-37).

54. Tocqueville, *Democracy*, I:I,8; II:II,10 (pp.167,337,373,394). For Tocqueville's conception of political culture, see Bouchet (1988).

cluded the immoral culture of the slave owning South. The culture also contained a distinct focus of identity, over and above the particular attachments to the states, by which they were "separated from everybody else", namely pride in the Union and the achievements of the revolution, i.e., the democratic institutions which "flourish among them, whereas they come to grief in the rest of the world".⁵⁵

8. Public Opinion

If it was indeed necessary to have some common opinions for a society to be integrated, Tocqueville was far more attentive than earlier republicans to the danger to liberty of citizens being *too much* in agreement. Possibly the most disturbing aspect of Tocqueville's new republicanism was his idea that the homogeneity of sentiments which writers like Rousseau thought it necessary to install by artificial means, and which the latter believed saved individuals from misrecognition and alienation, had become a formidable new danger to modern liberty. On the other hand, compared to Hume's and Madison's analysis of the danger of majoritarianism, Tocqueville offered a far more sophisticated conception of majoritarianism as a social and socio-psychological phenomenon - with political consequences. Implicitly, Tocqueville dismissed as at least inadequate the idea that an enlarged political realm with competing sectional interests and passions could counterbalance each other, let alone Madison's implied idea that impartial politicians were capable of transcending this pluralism rather than speak to, and manipulate its meanest common denominator. Finally, he demonstrated that the capacity for individual judgement which writers like Jefferson, Paine, and, in a more modest way, Madison relied upon as necessary for a democratic republic, could not be expected to appear automatically.

Tocqueville's ambiguity about modern liberty reflected a certain regret about the democratic decline in respect for the authority of learning, and the lack of replacement for the inclination, in a leisured class, to pursue learning for its own sake, something which had generated a steady supply of exemplary individuals with great independence of mind. Tocqueville's idea was not that man ought to reflect constantly. The trouble with democracy was also the absence of trust in the good judgement of others. True, a man "accepting any opinion on trust from another puts his mind in bondage". Yet, this was "a salutary bondage, which allows him to make good use of freedom". In a modern democracy, extending the spirit of equality to the things of the mind, the "nearer men are to a common level of uniformity, the less are they inclined to believe in any man or any class". However, the same democratic man, sceptical of authorities but unwilling to take the time to learn for himself, because busy with his more immediate and short-sighted pursuits, could come to combine distrust of his fellows with a propensity to accept "a

55. Tocqueville, *Democracy*, I:II,10 (pp.373-74,384).

quantity of ready-made opinions", relieving him of the necessity of forming his own". He would do the latter, because, in a society of uniform individuals, all "are readier to trust the mass, and public opinion becomes more and more mistress of the world"

In times of equality men, being so alike each other ... this same likeness leads them to place almost unlimited confidence in the judgment of the public. For they think it not unreasonable that, all having the same means of knowledge, truth will be found on the side of the majority

Democratic man, for all his independence of others, feels isolated and weak in the face of majorities and thus

in democracies public opinion has a strange power ... It uses no persuasion to forward its beliefs, but by some mighty pressure of the mind of all upon the intelligence of each it imposes its ideas and makes them penetrate men's very souls⁵⁶

Tocqueville's evaluation of public opinion was not universally negative. Public opinion was the main resource of a democratic republic, it was the medium of the political culture which Tocqueville praised, its nature was stability rather than flux or anarchy, and its power kept rulers in check, countered corruption, and helped economise with the need for coercive law.⁵⁷ But he did stress its sinister sides, which consisted of different aspects of *social conformity*. One was social control. Even where an individual did keep his own opinion, he might not dare speak or act upon it, lest he suffer the censure from his immediate community: "Those who still at the bottom of their hearts oppose it keep their views to themselves, taking great care to avoid a dangerous and futile contest". More subtly, each individual, in the face of a public opinion would not just "distrust his own strength" but also eventually "doubt his own judgement ... recognising that he must be wrong when the majority hold the opposite view". And eventually, what Tocqueville feared most, conformism could come as a relief to democratic individuals, who would be only too ready to surrender their power of judgement and impose intellectual servitude voluntarily on their own minds, "giving slavery a new face".⁵⁸

Apart from these justly famous elements of Tocqueville's 'soft despotism', we should remember that the disappearance of independent thought which Tocqueville certainly dreaded on independent grounds might also, eventually, cause all remnants of civic virtue to disappear and thus pave the way for real slavery. But the consequences of public opinion could also be quite straight forward

56. Tocqueville, *Democracy*, II:I,2 (pp. 434-436).

57. Tocqueville, *Democracy*, II:III,21 (pp.640-45) should be read against II:I,2 (pp.433-36).

58. Tocqueville, *Democracy*, II:I,2; II:II,21 (pp.436, 643-44); cp. I:II,7 (pp. 255-56).

violations of individual rights by the representatives of an unjust majority, acting tyrannically. Thus,

When a man or a party suffers an injustice in the United States, to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To the executive power? It is appointed by the majority and serves it as its passive instrument. To the police? They are nothing but the majority under arms (...) So, however iniquitous or unreasonable the measure which hurts you, you must submit⁵⁹

However, again, Tocqueville recognised that the spectre of public opinion had another, more promising side. Indeed, he saw "two tendencies in equality; one turns each man's attention to new thoughts while the other would induce him to give up thinking at all". Tocqueville certainly remained critical of conformity and intellectual mediocrity in America, but he did stress the potential for an unprecedented degree of reflection, which, he thought, demonstrated that the critical method of rationalist philosophy was part of a greater and fundamentally democratic tendency.⁶⁰

Also, for someone trying to "find out how enlightened the Anglo-American are ... [i]f his attention is concentrated on the learned, he will be astonished how few they are; but if he counts the uneducated, he will think the Americans the most enlightened people in the world". Tocqueville discovered that Americans, although sceptical of too abstract knowledge, nonetheless had a sound respect for learning which was based on the practical appreciation of practical men of the "usefulness of enlightenment". He was astonished to see "how incredibly quickly ideas circulates" in those "empty spaces" in America where, in the meanest cabin you found civilised men talking "the language of the town" although they were "prepared for a time to face life in the forest, plunging into the wilderness of the New World with ... bible, axe, and newspapers". Tocqueville partly linked learning to the system of public education. However, "to teach men to read and write is [not] enough to make them good citizens". Instead, broadness of mind, knowledge of political affairs and political rights came from active citizenship. In America, "[t]rue enlightenment is in the main born of experience", an experience for which, as we shall see, voluntary associations were a main instrument.⁶¹

9. Centralisation

The final aspect of Tocqueville's analysis of the dangers of democracy concerned his verdict on *centralisation and bureaucratisation*. Tocqueville was not an anti-state

59. Tocqueville, *Democracy*, I:II,6 (p.252).

60. Tocqueville, *Democracy*, II:I,1 (pp.431,436).

61. Tocqueville, *Democracy*, I:II,9 (pp. 302-4).

thinker, and in the American context he may be seen to represent a middle way between the Anti-Federalists and the Federalist position on national consolidation. If the conservatism of the former had been out of touch with the functional requirements of a modern nation, the latter, in particular Madison and Hamilton, had been far too complacent in their assumptions about the nature of central power. What saved the republic from the dangers of centralisation and administrative consolidation was not the system of complex government nor the competition of interest groups. It was the existence of civic virtue in general, and, in particular, of an *intermediate* level of government to focus and channel this virtue and to check central power. Madison had been obsessed with the centrifugal tendencies of the confederacy, and also Tocqueville wrote at length on the fragility of the federal concord in a time where individual states and citizens were occasionally hard pressed to find reasons to stick together, not least with the slave-owning South. But Tocqueville's French background made him see what the Founders overlooked: Centralisation and the more and more detailed and unaccountable regulation of every aspect of social life was a natural tendency of democratic society, and America must thank its decentralised administrative structure for avoiding these perils.

Distinguishing between two types of centralisation, Tocqueville argued that, as regards what he called "governmental centralisation", which was the concentration of the regulation of "[c]ertain interests, such as the enactment of general laws and the nation's relations with foreigners", he could not "conceive that a nation can live, much less prosper, without a high degree" of such centralisation. However, this was different and, in principle and (American) practice, separate from "administrative centralisation" which meant the concentration also of "other interests of special concern of the nation, such, for instance, as local enterprise".⁶²

Contrary to widespread opinion, arising from the experience of the lawlessness characterising the absence of governmental centralisation, administrative centralisation was a bad idea. It only served to "enervate the peoples who submit to it, because it constantly tends to diminish their civic spirit". It was also less rational:

Administrative centralisation succeeds ... in assembling ... all the available resources of the nation, but it militates against the increase of those resources. It brings triumph on the day of battle, but in the long run diminishes a nation's power (...) A central power, however enlightened ... can never alone see to all the details of the life of a great nation

Although administrative decentralisation from federal to state level had perhaps in some respects gone too far, leading to the inconvenience of non-standardised "little details of social regulation", what Tocqueville called the "political advantages" of administrative decentralisation were all the greater, when compared to his famously dystopian vision of a society where citizens were accustomed to the detailed

regulation of an ever-present, bureaucratic and paternalist state, that "milder" despotism which "would degrade men rather than torment them". Although modern tyranny was not impossible, it was more likely that democratic tyrants would be "schoolmasters". Over the new, docile democratic subjects would stand

an immense, protective power which is alone responsible for securing their enjoyment and watching over their fate. That power is absolute, thoughtful of detail, orderly, provident, and gentle ... It likes to see citizens enjoy themselves, provided that they think of nothing but enjoyment ... Thus it daily makes the exercise of free choice less useful and rarer, restricts the activity of free will within a narrower compass and little by little robs each citizen of the proper use of his faculties ... It covers the whole of social life with a network of petty, complicated rules that are both minute and uniform ... It does not break men's will, but softens, bends and guides it ... It is not at all tyrannical, but it hinders, restrains, enervates, stifles, and stultifies so much that in the end each nation is no more than a flock of timid and hardworking animals with the government as its shepherd⁶³

Such a state, yet an aspect of the more or less voluntary subjection to modern servitude, was the result of a peculiar tendency of democratic peoples, where "the idea of a single central power directing all citizens slips naturally into their consciousness" along with the related idea of the necessity of "uniform legislation". In a democracy, instead of the universalism of equal rights, there was always the danger that egalitarian sentiments translated to a view where "individuals seem of less and society of greater importance" because "every citizen is lost in the crowd, and nothing stands out conspicuously but the great and imposing image of the people itself". Additionally, under conditions of individualism and materialism "the natural inclination is to leave the only visible and permanent representative of collective interests, that is to say, the state, to look after [communal affairs]". The isolated individual often feels "the need for some outside help which he cannot expect from any of his fellow", and the "endless hatred ... against the slightest privileges singularly favors the gradual concentration of all political rights in those hands which alone represents the state".⁶⁴

What saved America from centralisation, and from the democratic impulse towards it, was the tradition of self-government. In America, the natural democratic aversion against all intermediate levels of government that separated the individual from the idea of a general will was offset by the *prior* existence of local sovereignties, jealous of their jurisdiction, which were already democratically organised and

62. Tocqueville, *Democracy*, I:I,5 (pp.87-88).

63. Tocqueville, *Democracy*, I:I,5; II:IV,6 (pp.88-93, 691-93, italics in original).

thus capable of being functional equivalents of the feudal local structures, which, in Tocqueville's view, post-revolutionary France had not been able to invent, yet lacked so badly.

10. Tocqueville's Political Civil Society

Tocqueville's great move in *Democracy* was to present equality of condition and corresponding changes in intellectual and moral outlooks as both inevitable, sanctioned by God, and dangerous. His aristocratic background sensitised him to the values that were lost with the old world, but he also made great play with the many areas where modern European states had the chance to opt for one democratic road, salvaging some of the old values and adding new ones, rather than another. America's ability to choose, by and large, the right kind of equality, had been facilitated by several fortuitous circumstances. Among them were the early revolution which gave national independence to a federation of states which was already accustomed to local political liberty, and whose people already possessed a high level of enlightenment. America's size and abundance of land, the lack of nobility and excessive accumulated wealth, the isolation of the continent, the absence of a large capital, and, Tocqueville granted, a number of wisely constructed constitutional provisions, in particular the division of functions between state and federal levels and the legal system (the jury institution), all these factors contributed to American success.⁶⁵ But Tocqueville also repeatedly stated his belief that democracy in freedom could be enjoyed in other places too, and that not particular American circumstances, institutions, or laws were needed, only the right *free* mores.⁶⁶ In America, however, such mores were linked to a set of institutions the importance of which was of a more general nature.

One of these institutions was a *free press*. To Tocqueville, although he disliked their licentious conduct, newspapers were watchdogs curbing the trespassings of the government, as well as instruments for the quick diffusion of knowledge about different political opinions, relevant facts, and political platforms. The eyes of the press "are never shut, and it lays bare the secret shifts of politics, forcing public figures in turn to appear before the tribunal of opinion". And, "through the press the parties without actually meeting, listen and argue with one another". In particular, in a time where "no firm and lasting ties any longer unite men", newspapers facilitated the cooperative efforts of citizens. They not only, said Tocqueville, "guarantee ... liberty; they maintain civilisation". They certainly occasionally "lead

64. Tocqueville, *Democracy*, II:IV,2 (pp.669-73).

65. Tocqueville, *Democracy*, I:II,9 (pp.277-315).

66. E.g., Tocqueville, *Democracy*, I:II,9 (pp.308-15).

citizens to do very ill-considered things ... but without newspapers there would hardly be any common action at all".⁶⁷

Another institution, already noted, was *local self-government* in the townships. They were the focus of the first patriotism of American citizens, and from them emerged the overarching identification with the political culture of the Union. The habit of deciding common affairs of immediate importance combated individualism and egoism. And both the power which the institution represented in the federal structure, and the way individuals were taught to appreciate self-government by practising it, constituted an effective protection against bureaucratic centralisation and tyranny. Indeed, "[l]ocal institutions are to liberty what primary schools are to science (...) Without local institutions a nation may give itself a free government, but it has not got the spirit of liberty".⁶⁸

Thirdly, *religion*, while different from that civic religion which has sometimes been ascribed to Tocqueville, was still conceptualised in a distinctly political manner. Not only did it have a political function ("I am led to think that ... he [who] has no faith ... must obey, and if he is free he must believe"), it was positively integrated in American political culture. Unlike Machiavelli, but in concordance with most of the modern republican tradition, Tocqueville emphasised that religion counteracted excessive privatism, materialism, and egoism. But more positively, "every religion has some political opinion linked to it by affinity", and history offered many examples that where people had "made prodigious efforts to defend a country ... religion was almost always the main motive force". American Christianity, pluralist and ecumenical in form, constantly reminded citizens, not only of their duties to their immediate next man, but also of the universal equal dignity and free will of mankind, as embodied in the sacred principle of political rights which was the legacy of the American revolution. For this reason, for Tocqueville, who was not a very firm believer himself, religious doctrine of an inconspicuous and general nature ought to be supported by politicians, "acting as if they believed it themselves", even as the beneficial effects of religious beliefs depended on the strict American separation of church and state.⁶⁹

The final and perhaps the most important institution, discussed by Tocqueville, was the *association*, of which he found a number of different types. He distinguished between those which did not have an immediate political content and political associations proper, i.e., such that were "a necessary guarantee against the tyranny of the majority", "the despotism of parties or the arbitrary rule of a prince" where individual citizens "learned to combine with his fellows to preserve his freedom". Not always distinguishing them clearly from political associations,⁷⁰ he also

67. Tocqueville, *Democracy*, I:II,3; II:II,6 (pp.186,517).

68. Tocqueville, *Democracy*, I:I,5 (p.63).

69. Tocqueville, *Democracy*, I:II,9; II:I,5; II:II,15 (pp.287,444,546).

70. Tocqueville, *Democracy*, I:II,4 (p.190).

finally discussed the role of political parties (which used associations as their "weapons"), which were an "evil inherent in free government". Some of the latter Tocqueville treated as "small", relatively narrow single-interest organisations, whereas others, clearly less of an evil, were "great" parties, which contained a more principled political program, and which had been instrumental in great national transformations.⁷¹

It seems clear that, among the numerous associations that had "no political object", and which included "a thousand different types - religious, moral, serious, futile, very general and very limited, immensely large and very minute" some organised "to give fêtes, found seminaries, build churches, distribute books, and send missionaries", Tocqueville also included advocacy groups which, even if they did not direct their efforts at a political level, aimed at advancing larger causes and at transforming values or social habits. Thus, Tocqueville's favourite example was the large temperance movement in America which exemplified how Americans who "have conceived a sentiment or an idea that they want to produce before the world ... are no longer isolated individuals, but a power conspicuous from the distance". Its "actions serve as an example; when it speaks, men listen"⁷²

Democratic peoples, according to Tocqueville, "would ... find themselves helpless if they did not learn to help each other voluntarily". However, the functions of associations political and non-political, over and above their capacity to influence public opinion or defend citizens from the state, were several. Without them, "[t]he morals and intelligence of a democratic people would be in as much danger as its commerce and industry". With them, "the circulation of feelings and ideas" was facilitated, and citizens developed a broader, more reflective, and more tolerant sense of solidarity:

Feelings and ideas are renewed, the heart enlarged, and the understanding developed only by the reciprocal action of men one upon another

Such feelings did not arise automatically in a democratic society as others had believed. On the contrary "they must be artificially created, and only associations can do that". Associations were necessary for men to "become civilized", but also to "remain civilized".⁷³

These beneficial effects flowed from non-political ("the intellectual and moral") associations as well as from those political associations proper which Tocqueville called "great free schools", and in which "large numbers see, speak, listen, and stimulate each other to carry out all sorts of undertakings in common". However, it is a mistake to assume that Tocqueville regarded these voluntary associations as

71. Tocqueville, *Democracy*, I:II,2,40; II:II,5 (pp. 174-75,192,195,513).

72. Tocqueville, *Democracy*, II:II,5 (pp.513-516).

73. Tocqueville, *Democracy*, II:II,5 (pp.514-17).

causally primary in the development of American civility.⁷⁴ The habit of association around "little business concerns" certainly helped citizens "acquire a capacity to pursue great aims in common". However, "the art of political association", although these associations were "only one small part", in fact "improves this technique for civil purposes". Political association proper - in turn facilitated by the American tradition of local self-government - was the first cause of something that would not otherwise easily emerge. Thus, "politics spread a general habit and taste for association. A whole crowd of people who might otherwise have lived on their own are taught both to want to combine and how to do so", indeed to do so in associations that are "extensive", and which "draws a lot of people at the same time out of their own circle; however much differences in age, intelligence, or wealth may naturally keep them apart". According to Tocqueville, the "common interest of civil life seldom naturally induce great numbers to act together. A great deal of artifice is required to produce such a result".⁷⁵

Voluntary associations, local self-government, an ecumenical religion which preached the universal equality of man, and a free and vigilant press, these were the institutional components of Tocqueville's distinctly republican, but also distinctly *new*, conception of a *political civil society*. In formulating it, Tocqueville implicitly dismissed as inadequate Madison's pluralism and the 'economy of virtue' of an 'enlarged sphere'. The competition for power of interest groups, he might have said, would not work to check central power, if individuals were so absorbed in their own (group) interest and petty concerns that they would have no real time for politics, or if they were so insecure of their own capacity to form an independent judgement that they would welcome the authority of public opinion. Also, although he too took part in the Enlightenment revaluation of the effects on welfare and national development, as well as the cooling and rationalising spirit of commerce and industry, he also stressed, in a manner that went beyond the ambiguity of the Scottish civic philosophers, including even Ferguson, that civility - tolerance, impartiality, reflective capacity, trust, and the capacity to cooperate with strangers for mutual ends, accepting diversity and the fact that collaborators and citizens "are not obliged to follow exactly the same path" - was an active, political, and *artificial* affair.⁷⁶

Tocqueville's civil society was liberal, in the sense that it was based on spontaneous, voluntary cooperation. But it was republican in terms of its content and functions, and in terms of Tocqueville's emphasis on its contingency. Although Tocqueville shared the liberal notion that active citizenship and 'manly independence' of thought and action could not be forced and had its independent moral value as an expression of spontaneous autonomy, he did not entertain an idyllic

74. As does Putnam (1993).

75. Tocqueville, *Democracy*, II:II,5-7 (pp.513,517,520-24).

notion of civility growing from below, once a certain level of enlightenment had been reached. For all his emphasis on local self-government, Tocqueville's conception of civil society was strictly a conception of a society of *citizens* who had to be socialised into a shared, distinctly national, political identity, based on cooperation and a shared political past - what he called 'reflective patriotism'. This patriotism, completely in line with the tradition, was of a rational kind, based on self-interest 'rightly understood' - the enlightened awareness that one's own liberty and well-being was intimately tied to a local as well as a national common project. And the very capacity to have such an identity, along with much of its content, were determined by the participation of each citizen in a common political culture based on a degree of homogeneity, shared language, and religious feeling - but above all on the homogeneity of equal enlightenment in the sense of recognition of human dignity and respect for right. This recognition, with its particular American flavour, foreshadowed Durkheim's later concept of a national 'cult' of the individual.

Civil society, to Tocqueville, was not a quiet and harmonious, let alone a consensual place. Again, he placed himself squarely in the republican tradition of accepting a measure of moderate *tumulti*, in his suggestive descriptions of the sight that met the visitor who came to America:

No sooner do you set foot on American soil than you find yourself in a sort of tumult; a confused clamor rises on every side, and a thousand voices are heard at once, each expressing some local requirements

While different groups arose to promote different causes, more or less local or national, more or less parochial, all were part of that "great political movement which keeps American legislatures in a state of permanent agitation". This agitation, "constantly renewed", was associated by Tocqueville, with a spirit of democratic *energy*, a "restless activity" which spread through civil society, produced very beneficial effects on trade and manufacture in America, and enabled the country, above all to act "by and for itself", learning from its mistakes, and facing the problems of the future without the defeatism that Tocqueville found in European thought.⁷⁶

Above all, with his new conception of civil society, Tocqueville modernised the republican language so as to deal with the new dangers that he saw in the conformism of democratic society. He presented a disturbingly dystopic picture of modern mass man who was trapped in the 'loneliness of his own heart', while at the same time this loneliness and isolation, unless the authority of tradition and social hierarchy were replaced by modern associations, caused him to be unable to trust his own opinion or even to have one at all, and to resist the pressure towards conformity, not from any powerful individual in particular but from the mass of the col-

76. Tocqueville, *Democracy*, I:II,4 (p.175).

77. Tocqueville, *Democracy*, I:I,4; I:II,6 (p.60,242-44); Lively (1962:228ff).

lective. Hopeful that America had found a way to counter these dangers, this was yet the area where Tocqueville's fears were greatest. It was also the area where his thought foreshadowed - and directly influenced - the most important contemporary republican analysis of the danger to liberty represented by a *society* conceptualised as a break-down of intersubjective space between individuals. I have in mind, of course, the work of Hannah Arendt and her conception of a public sphere which helps individuals to act together while defining themselves as separate individuals and resisting the pressures of conformism - including the deadly pressures of modern ideologies such as fascism, nazism, and racism.⁷⁸

This vision of Tocqueville's was what separated him from writers like Constant. Constant, despite mentioning the need for civic spirit also in a representative democracy, entertained relatively complacent beliefs that commercialism made modern despotism "impossible", and that "[a] people can never detach itself from what is true liberty", as "[t]yranny ... and injustice are ... against nature". Even with occasional setback, truth would still "spread and penetrate" eventually, speaking to "the better part of our nature". Against this, it was Tocqueville's permanent intuition that liberty was *always* threatened, both directly and indirectly, by the collapse of the intersubjective space of interacting, debating, and reflecting citizens, and that political enlightenment was itself a continuous process, linked to the generation of such space, rather than an accomplished state of civilisation.⁷⁹

78. For Arendt's often unnoticed inspirations from Tocqueville, see Lloyd (1995).

79. Constant, *Spirit of Conquest and Usurpation*, 18,19 (pp.140,145); *Liberty of the Ancients and the Moderns* (p.327).

CHAPTER 7: CONTESTING THE REPUBLICAN TRADITION

1. A Reconstruction of Republicanism

The previous five chapters have provided a pointed reconstruction of a republican history of ideas. The account was primarily tailored to counter the Baron-Pocock paradigm of interpretation which has represented the tradition as the long ideological journey of *civic humanism* from the Aristotelian discourse of the fulfilment and moral growth of the *zoon politikon*, via Machiavelli, to the myth of the American Frontier.

The republican history of ideas, I have tried to show, is instead characterised by the continuity of a core argument about contingent *libertas* and the need for civic virtue to sustain it through time. Considering the centrality of the argument, it has been strikingly overlooked in contemporary political theory. It also, or so I shall argue, testifies to the success of modern liberalism to suppress and forget a set of critical voices, potentially challenging this discourse on its home ground.

The argument has recently been brought back to light by the work of Quentin Skinner and Maurizio Viroli on whose shoulders I stand with this work. It pops up occasionally in some of the literature which is critical of Pocock's thesis. But the still dominant trend in the latter work, particularly in the constantly growing output of commentary, and commentary on commentary, on the American founding period, is to accept the civic humanist interpretation of republicanism as the terms of the debate, while simply denying the long history of the doctrine claimed by Pocock and his followers. Thus, the discovery of state of nature theory and natural rights discourse in America (patently evident for anyone who will care to look) is used to show that the rhetoric of virtue and corruption was a mere nostalgic left-over in an age whose values had changed towards the pursuit of private happiness, or, distinctly unhelpful, that the old values had fallen from grace by being tied to liberty and rights in instrumental, 'liberal' fashion.

My first reconstructive aim has been to participate in the *revision of republican revisionism*, which is under way. While the counterattacks by Kramnick, Appleby, Sinopoli and many others indeed expose the one-sidedness of Pocock's attempts to read Locke, private liberty rights, and commercial society out of Atlantic political history, the positions of these authors also tend to reinforce civic humanist orthodoxy. They contribute to the continuing failure to appreciate the essential character of republican political thought as an argument about liberty which was *always* an 'instrumental' one. And in doing so, they assist the misguided erection of theoretical and discursive walls separating allegedly incommensurable ideas about the very point of politics in European political thought. My approach, which has focused on arguments and their historical contexts, rather than only discursive frames let

alone closed 'paradigms', has demonstrated the need for sober reflection on the common ground which is shared by republican and 'liberal' writers. Indeed, it has attempted to avoid easy generalisations of either language and to pay attention, in particular, to the many different aspects of early Enlightenment thought which only gradually developed into what we now call liberalism. If republicanism has been misrepresented, the erection of ideological liberal straw men has been equally common, and equally unfortunate. I have suggested that the fault lines between the two tradition are blurred along several theoretical dimensions and that more subtle means of analytical differentiation are needed.

My attempt to develop the work of Skinner and Viroli has been motivated by the need to present a more systematic and didactic account, but also to *qualify* as well as *radicalise* their histories of instrumental republicanism. The qualification has to do, again, with the perhaps disappointing conclusion that the fronts of the great historical battle were not so distinct. In particular, the depiction of natural rights discourse as a radical, possessive individualist political vocabulary,¹ the equation of this vocabulary with liberalism *tout cour*, and its representation as the sole and early bane of republicanism, is misguided. As regards the difference between republicanism and liberalism, the way to proceed is to accept the huge variations in the ways that both discourses have been used. We must ask specific questions, such as when and how discourses of virtuous activity for the sake of the common good of liberty came to clash with, was accommodated to, or reinvented within different liberal ideas about natural rights and state of nature, the effects of commerce and industry, Christian morality and moral sense psychology, the role of political institutions, Enlightenment rationalism, and utilitarian calculus. We should also look at specific manners in which the language was either consciously rejected or forgotten.

My account is slightly more radical than the work of Skinner and Viroli in two respects. First, I suggest the inaccuracy of the idea that republicanism proper is accompanied by a *civic humanist* brother of more Aristotelian persuasion, and with an important independent existence of his own. There may have been some purely 'Aristotelian' scholastic writers in the early Renaissance who saw political liberty and political life generally as a communal quest for human flourishing.² Yet, as regards the canon of writers whose work has been investigated here, I believe that to distinguish sharply between two republican *personae*, one being of primarily Roman and 'instrumental' origin, the latter gallantly resisting temptations to abandon the ancient ideal of *politics for its own sake* is to misrepresent the role of hu-

1. E.g., also Skinner (1990:305,307). In fact, although Locke is mentioned, it is not altogether clear who the "liberal theorists of natural rights" are who, "since Hobbes", perpetuated the mistakes of which Rawls and Dworkin ('rights as trumps') are still guilty (Skinner 1992:217).

2. Skinner (1990:296).

manism in republican history.³ Even the most ardent lovers of the public light, from Machiavelli to Jefferson to Tocqueville, retained the constitutive primacy of the instrumental argument. Although some Renaissance writers, and later authors like Ferguson, made more of glory, greatness, and development of human character than others, liberty was there too.

Moreover, the search for civic humanism in Western political thought may reflect the common attribution, shared by Viroli and Skinner,⁴ of something like Pocock's idea of this creed to Greek writers, particularly to Aristotle. Whatever the complicated impact of his *Ethics* on the Renaissance, which I do not pretend to be able to trace, I have argued that, strictly speaking, not even Aristotle was a civic humanist. Recent scholarship has shown that we have overlooked a political Aristotle who concerned himself with negative liberty, the generation of political justice, and conceptions of the political community as an unnatural artifice, as the necessary *framework* for human flourishing. And arguments abounded in Greek political theory in general (coexisting to be sure with a virtue ethics of human perfection) which linked political activity to the enjoyment of personal security under law. Indeed, some disputes over Aristotle's place in or outside the republican canon may owe more to modern receptions of Aristotle than to what he actually said about political life, or how this was understood by later writers.

Thus my account has demonstrated the remarkably long duration of the republican argument, including much of the substance of 'virtue', and the relative accessibility, contrary to many views, of conceptualisations of the political world in such places as ancient Greece and the Italian Renaissance. However, my second reconstructive aim has been to highlight the extraordinary variety of ways and circumstances in which the republican argument was formulated. Skinner's statement of its form in Machiavelli and later on in the English republican tradition is by now well known. I have tried to show that the problem of the fragility of liberty presented itself illuminatingly different in the historical contexts of Renaissance city states, absolutist monarchy, and American democracy. The danger to *libertas*, the manner in which it was threatened, i.e., by a too strong or too weak state, by size and centralisation, or by commerce and luxury, changed through the ages.

Each of these two reconstructive aims, I believe, have been accomplished. What remains, as a separate and equally important concern of this thesis, is to present republicanism in such an analytical fashion as to make it accessible as a reservoir of ideas and arguments for contemporary political theory and political science. The point of doing so is at least twofold. As suggested by my reference in the Introduction to the 'liberal-communitarian debate', the construction of ideal typical aspects

3. E.g., Burt (1990:23).

4. E.g., Skinner (1990:308); and Viroli, who endorses Aquinas understanding of Aristotle, according to whom "[c]ivil life is man's natural destination" (Viroli 1992:35).

of republicanism may be used to inform the debate over political liberalism. In the concluding chapter, I briefly return to the theoretical challenge to contemporary political theory which I believe republicanism represents. Secondly, ideal typical reconstruction helps to bring out the different aspects of an empirical argument, i.e., a causal account of the fragile nature of constitutionalism and liberty.

The outline of these analytical dimensions requires some preliminaries, and I shall proceed towards it by way of a set of delineations and clarifications. First, as noted, the language of republicanism has been employed to many ends. The historical analysis implies that at least four standard representations of the nature and purpose of political activity of republicanism are too one-sided, or in some cases quite mistaken, although illuminatingly so. Each stress aspects, of politics as *self-development* or *self-creation*; politics as *community*; politics as *autonomy*; and politics as radical *political constructivism*, which are indeed in some sense to be found in the tradition - only not in the way presumed.

Secondly, I discuss the question of whether republicanism should be defined, and delineated from liberalism, by its employment of a specific concept of liberty. I do so by looking at the very interesting contribution by Phillip Pettit, who has recently attempted to carve out a place for republicanism beyond communitarianism and liberalism. Despite the importance of Pettit's work, I argue that both his attempt to portray the republican *concept* of liberty as distinct from that of mainstream liberalism, and his more general notion of republicanism as a theory of *the resilience of liberty*, while indeed tapping certain significant aspects of the tradition, are nevertheless inadequate.

However, the conceptual sophistication of Pettit's work makes it an ideal contrast for my own distinct view of republicanism. Employing a different metaphor than 'resilience', I argue in the next chapter that the variety of republican positions and arguments necessitates an analytical distinction between four dimensions of *the fragility of liberty* in the republican tradition. These dimensions serve a triple purpose. They highlight that republican voices responded to four distinct modalities of the civic virtue-liberty nexus. Secondly, inside them it is possible to discern continuities and breaks in the republican tradition, as well to locate where and how specific liberal arguments represent departures from republican diagnoses of liberty, even as the latter in turn were themselves progressively framed in a recognisably liberal language. And thirdly, the stubborn republican attempts to resist these liberal departures correspond to different challenges to liberal political theory that still stand.

2. Four Ways to Misrepresent Republicanism

It is, I believe, necessary to dissociate the republican tradition from certain well-meaning commentators. The task is necessary, if for the same reasons somewhat tiresome, because important differences are overlaid and obscured by master con-

cepts like positive liberty, autonomy, and community, all of which need to be unpacked.

A number of overlapping, only analytically distinct themes can be discerned. First of all, there is an astonishing near-consensus echoing Pocock's assertion that, whatever its point, republican liberty is positive in the sense of realising or enjoying something through common action, that this liberty is its own end, and indeed that, far from sustaining negative liberty or the value of private life, republican liberty may be at odds with it, and may involve a heavy de-emphasis on the liberal language of rights.⁵ Yet, as we have seen, republican discourse in all its variants from Aristotle to Tocqueville has as its core concern exactly the importance of a protected private sphere, although not necessarily, nor certainly in the beginning, in the sense of natural individual rights.

The first two common ways of ignoring that republican political action is aimed at common liberty are, first, the notion that republican politics in and by itself bears its own reward and justification, and secondly, that it is needed for the sake of ethical integration of individuals and the corresponding maintenance of the particular common good of a substantially virtuous community. Although the two ideas are often linked, it is useful to look at them separately.

5. According to Shumer, in Machiavelli as in the entire tradition, "the liberty of each is the power to participate in a common activity". This "[p]olitical or 'public' liberty ought not be confused with our concept of private, 'civil liberty' - the security of one's rights and property and protection from the domination of others - embedded in modern liberal-constitutional thought" (Shumer 1979:14). Charles Taylor sees the existence of a (Canadian) republican political tradition in the higher value placed on collective decision-making, and believes that this is connected to the need to compromise on a politics of individual rights (Taylor 1989: 170-71; cp. Sandel 1988:64). Oldfield begins his reconstruction of civic republicanism in the modern world with the need for republican ideals of participation in the community to be modified and accommodated to an otherwise exclusively *liberal project* of citizenship as a status of "effective security", something "to be sought and, once achieved, to be maintained", - curiously picking out exactly that early liberal liberty flavour, found in Locke, Hume, and Montesquieu, which republicans through the centuries have stressed too (Oldfield 1990:2-3, cp. Sullivan 1986:12). Finally, much of the "republican" legal revisionism going on in the United States has at its core exactly the confrontation between collective decision-making and individual rights. See here, for instance, Fraser (1990) and Sunstein (1985:31). Michelman (1986:24-27; 1988:1503-4) sees the essence of republican liberty in much the same way, although his own constitutional jurisprudence is much closer to the reading of the tradition proposed here. However, both he and Bruce Ackerman choose to see republicanism's concern with private liberty as commencing only with *The Federalist* (Ackerman 1991:45-46; also Amar 1988). For (critical) commentary on the new 'republican' jurisprudence in America see e.g., Epstein (1987), Murphy (1992) and West (1990:678-721).

I.

As regards the first - *self-creation* or *self-development* - Arendt's political thought, or rather its existentialist side, has been influential. For her, according to influential readings of her work, political action carried the promise of individual authenticity. Her ideas were shaped here by Nietzsche and Heidegger, but she went beyond both in stressing the importance of public appearance. Individuals could transform and, in turn, realise their selves in politics by inserting an aspect of spectacular, somehow *uncaused* newness, into the public realm. Although not her considered opinion (and although her phenomenological anthropology of *appearance* did not necessarily involve activity which either we or the republican tradition would call 'political'), she sometimes seemed to suggest that the point of 'the world' and 'the space of appearance', so fragile in modernity, was to make possible such experiences.⁶ Yet, even in her most existentialist moods, when Arendt connected the longing for authenticity and recognition with political action, she also connected it with the political problems of the twentieth century, above all the horrors of totalitarianism. The existential premium could only be reaped in action with common liberty as its instrumental point. Moreover, even she thought that only the few who had a taste for Jefferson's 'public happiness' (which did not include herself) would crave for this premium. The great many who could be called upon to act as a matter of duty would usually act, if ever, for other reasons.

The quest for glory, honour, or recognition - being remembered after one's death for something great - is a part of the republican tradition. The child of the classical age, this aspect was reinforced and transformed in the Renaissance image of mortal man who is capable of the most base and the most noble in the art of politics as in other arts. Politics could be about the greatest of things, and there

6. Arendt has many followers here, although only some of whom confuse her occasional existentialist *Unbehagen* in modernity with republicanism. According to Geise, the republican citizen "through the act ... not only declares his uniqueness, but also ... present[s] himself for assessment by his peers", where "'esteem' and 'fame' have value only if they are given freely by one's peers". We should also ask, he thinks, "what characteristics describe the state which makes meaningful actions likely?". Indeed, "[f]or the republican ... actions are worthy in ... the degree to which they fulfil the two tasks of sustaining the virtue of the actor, as well as enhancing the public space which makes these acts possible" (Geise 1984:25-29). In contrast to the communitarian version, the point here is *individual* self-expression, the public realm is stage, and the community is an audience (cp. also Lasch 1991:173-74). In a rather less celebratory tone, some feminists, reading republicanism through Arendt in the same fashion, have been quick to point out the gender bias in this agonal conception of politics, with its contemptuous dismissal of daily necessities (Phillips 1991:46-50,115; Pitkin 1981). Arendt's existentialist persona, most evident in *The Human Condition* (Arendt 1958b), has been highlighted by Hinchmann & Hinchmann (1984; 1991) and recently by Benhabib (1996:35-61). I discuss the Arendtian tension between *Existenz* and republicanism in Mouritsen (1992; forthcoming).

was cause for regret, in some writers, when the taste for such greatness was completely lacking. But republican writers also recognised that these tastes, let alone the slightest chance of realising them, were for the few, not for the great mass of the *popolo*.

Machiavelli and Tocqueville certainly aspired to belong to these few. Unable to gain the immortality they believed they deserved by playing a direct political role, they instead eventually sought to invest themselves, as advisor to the good prince and as inventor of a new political science, with some of the pathos of the great legislator. While Machiavelli could perhaps pursue fame and recognition for a time with the *grandi* outside the free republic (as a shrewd *Machiavellian*) - he recognised that such competitive and disruptive *ambizioni* were also the chief vice of the elite, and that in the end true and lasting glory rested with those whom the gods loved most, i.e., those who founded cities, and who did so, *contra* Pocock, not merely for the sake of perpetuating their own civic life.⁷

If Arendt's politics of authenticity has often been noted for its flavour of heroic display and competitive individualism, Pocock's *classical man* does not, in fact, seem to drink from quite the same Homeric or Renaissance wells, despite the author's occasional reference to Arendt. While constantly presupposing the idea of the model citizen or *vir virtutis* as a historically recurring standard, yet recognising that it is hardly constant over time, Pocock is surprisingly little concerned with either the nature of the changes or of the remaining core. By and large, becoming a virtuous man, as Pocock reads his authors, is a question of escaping the superficial and transient life of luxury and passion, for the sake of the security of a more *stable group-related* identity. This, of course, is quite contrary to Arendt's heroic existentialism.⁸

As recently discussed by Charles Taylor,⁹ this notion of *conforming* to the ideal of a citizen, being recognised as *alike* in a group of equals in virtue (particularly in self-denying, martial virtue) is an independent political ideal and motivation in Rousseau. Yet, Rousseau's total citizen, who tries to escape alienation, stands rather alone in the tradition. Idealisation of Spartan simplicity and purity of character can be found elsewhere, in some of the early English republicans and much more ambivalently in Montesquieu, but here it is primarily conceived in instru-

7. Siedentop (1994:131-32), Dunn (1990c:71-72), De Grazia (1989:374-80).

8. Elsewhere, speaking about the implications of viewing political languages as paradigms, Pocock suggests that political activity inside such paradigms (*in casu* the republican paradigm) should be understood in connection with the individual need to affirm, but also to navigate and criticise, inside reasonably stable political identities. The article attempts, in very elusive and abstract language, to draw normative implications for a theory of political practice from political linguistics and historiography, and its relation to Pocock's understanding of political practice in historical republicanism is quite unclear (Pocock 1971b).

9. Taylor (1991; 1992:25-51).

mental terms (as *also* in Rousseau), as the price to be paid to avoid political corruption. In fact, Montesquieu's influential version of the self-denying republican citizen, with which he, unlike Rousseau and Pocock, was uncomfortable, represents the beginning of a biased modern reading of the classical tradition.

Moreover, with the exception of Cicero, even the instrumental idea of educating to virtue does not usually presuppose something like 'love of virtue' or concern with one's own moral stature as a strong empirical motivation. Republicanism, much more sanguine than usually presumed, sees enlightened self-interest as a necessary core in civic motivations, although the general public recognition that some personal sacrifice should be expected and that such sacrifice is honourable, gives a twist to the structure of civic motivation. Seeking the esteem of fellow citizens may indeed become a motivation for a few, while avoiding the shame of not meeting one's obligations will be a more potent factor for the majority.

Republican discourse, with few exceptions, was never really a language of politics for its own sake, or for the sake of human fulfilment. To the extent that such gratifications could indeed be reaped, they would always depend on a publicly shared *point* of politics - common liberty. It is difficult to overstate this conclusion: Pocock has been the authoritative source of a civic humanist narrative about political motivation which, upon consideration, is strikingly implausible. It has sought to install an historical ideology based on the primary notion that political self-government is to be cherished by all for the sake of their wholeness of moral character. And this ideology, allegedly, was moving large numbers of individuals and penetrating most political writings as late as the American revolution and constitutional convention period. Why such effectiveness? And why should this ideology be a challenge to liberal discourse on individual rights, including the right to seek individual happiness, let alone exert a minimal influence on individualistic emigrants seeking their fortune on the Western Frontier, unless something more was at stake than proposed by Pocock? The *non-existence* of such a doctrine in the places where political theorists have sought for it the most constitutes circumstantial evidence to the sceptic. But I shall not pursue my suspicion here that no political order or political ideology could ever thrive for long on a Pocockian idea of politics.¹⁰

10. Pocock assumes that a normative account of the *ideal man*, and the science of nurturing this creature, must be the key question at all stages of the history of political thought (e.g., Pocock 1985c:71). This is so because these are the basic components of the conceptual vocabularies which exist as matrixes of meaning in a society. While Pocock, writing republican "tunnel history" (as he conceded after *Moment* (Pocock 1981b:53)), does not suggest that only one vocabulary is available at a time, he does imply that they "confine more than they liberate", and that, rather than combining and changing concepts in response to the social reality historical actors face, they find themselves (for various, including 'material' reasons) feeling affinity with a language "which thereafter entails them in its multiple meanings" (Appleby 1992:283).

II.

The second major misunderstanding is the association of republicanism with recent communitarian writings. There is a certain degree of shared ground and some communitarians are more *instrumental* than others. But by and large, communitarian writers, as well as their critics who tend to believe claims of republican ancestry, should look elsewhere, notably in Hegel, Herder, and certain parts of classical sociology, in search of intellectual roots. Republican authors do not share the notion that political action is a major way to be integrated into, to experience, or to reinterpret the substantial ethical content of a shared common good, nor, indeed, that the very activity of experiencing or searching for this ethical content is itself a part of this good. They certainly do not exhibit anything like the communitarian relativist idea of a 'particular', local common good as 'constitutive', and deriving its value from the fact that it is shared by a certain group of people, and that it defines the identity of each one of them.¹¹

I hope to have shown that the communitarian employment of a republican language of the common good and virtue represents only the most superficial congruence between the two doctrines. Thus for instance the Aristotle which is used, directly or indirectly, by many communitarians is not that more commonsensically political writer which I tried to rehabilitate. The latter was concerned with real problems of conflict and government, of order in the always imperfect political community, and of justice and the rule of law as the necessary framework for the good life. Most importantly, even for this founder of virtue ethics, the good life was only contingently related to political affairs. Moreover, it was the problems of the latter, rather than the schematics of the former that were to be taken up in republican thought.

Republican virtue is the politically relevant character traits and actions of a citizen as public person, i.e., as a person who seeks to further common liberty, not the quality of his general conduct. The common good of Cicero, Machiavelli, Sidney, or

11. The extent of the communitarian embrace is wide. According to Oldfield, for instance, "[c]ivic republicanism ... holds that political life ... is ... the highest form of human living together that most individuals can aspire to" and in this life "citizens ... make judgments about their identity and about common purposes" (Oldfield 1990:7,9). Taylor associates his own, rather Hegelian, idea of politics as interpretative practices directed towards establishing and partaking in a constitutive common good with "the tradition of civic humanism", in which he includes Aristotle, Machiavelli, Montesquieu, Rousseau, Tocqueville and Arendt (Taylor 1985: 96; cp. 1989). Sandel (1988:63-65; 1996) sees the American republican tradition as essentially advocating a formative, eventually national community of virtue. Also Walzer (1990a: 19-20) appeals to this tradition. That liberal critics of communitarianism tend to think they are attacking republicanism at the same time is no surprise (e.g., Herzog 1986:487ff; Phillips 1993; Bader 1995; but cp. Rawls 1993a:205-6), although few go as far as to postulate that "classic republican thinkers" believe that "it is through politics that we learn to love each other" (Howe 1991:125).

the Anti-Federalists was not, even remotely, a fully shared way of life. Even Rousseau, who introduced nationalism to republicanism, was only a half exception. He praised as an independent value the moral unity (and the xenophobic sentiments) of the Polish people that he sought to create. But he knew that it had to be *created*. It was hardly a natural entity, as communitarians tend to believe. And in the overall structure of his argument it was still linked, as a Machiavellian argument about civil religion driven to extremes, to the maintenance of common liberty.¹²

Nor does the republican common good have the peculiar island character of cultural givenness and untraslatability which is found in much communitarianism. Montesquieu's alleged relativism was an insistence that liberty (the security and absence of fear that all rational persons will cherish) required a *fit* between constitutional and legal architecture and prevailing social and cultural mores, a fit that would vary on a number of dimensions. These he sought to trace in a comparative sociology of liberty, later to be sophisticated by Tocqueville. Finally, even the Anti-Federalist concern with securing certain local interests and specific important rights against centralisation had very little to do with later communitarian attempts to trump individual rights with self-government.

The republican *bene commune* remained the shared political way of life of common liberty and justice and the institutions and practices that sustain it, in very large measure by maintaining the divide between the public and the private. However, in a manner to be explored, a republican common good of *liberty* was conceptualised through ideas of *patriotism*, which were shared by the entire tradition although typically in less drastic versions than that of Rousseau. It was described in various ways in terms of a particular political enterprise of a given people, and dramatised in the collective mnemonic structure around myths of beginnings and civic rites of passage, to which the republic owed its temporal existence.

Some have seen republicanism as a source of inspiration for invigorating (local) community life in a more broadly moral sense. Republicanism, for communitarians

12. As summarised by Haakonssen (1993:571):

A striking feature of traditional republicanism is that for all its talk of virtue, it rarely presents anything that can be called a moral theory. At most, there may be an invocation of Aristotle or neo-Stoic ideas to support what is little more than an intuitive and tradition-bound idea of the wholeness of character that is required of the independent citizen. The parts of the whole character are, however, largely determined in terms of the public functions or offices required by the republican constitutional machinery. Of course, respect for republican forms is emphasised and, in that sense, a republican ethos inculcated. But this is a far cry from the ethical way of life detailed by communitarians ... The traditional republican tirades against 'corruption' and 'luxury' had little to do with immorality as such, being primarily protests against intermixing one's private life, whether good or bad, with the public realm, especially in economic matters

of a more sociological brand,¹³ comes to stand for moral, responsible, or selfless behaviour, with participation in local community activities and shared cultural traditions, and with unreflected habits as the normative cement. This is perceived as being in contrast to the mindless egoism and hedonism of acquisitive economic liberalism. While concerns of this new sociological moralism with such problems as poverty, inner-city deprivation, and unaccountable political authority in American certainly may be seen to strike a contemporary republican chord, the *means*, when they include the authority of tradition, a new moralism, and the comforts of religious worship as palliatives for individuals in search of a haven in a morally disturbed modernity, do not. Sociologists like Robert Bellah, Phillip Selznick, Christopher Lasch, and most recently Amitai Etzioni, might, if they wanted to, point to ground shared with Rousseau. But their standard embrace of Tocqueville is mistaken. Religion was primarily important for Tocqueville as a provider of the moral texture of liberal egalitarian individualism - one, but by no means the only, necessary support of a political culture of equal liberty. Far from condemning liberal individualism and materialism *tout court*, Tocqueville aimed at securing politically beneficial versions of both. Moreover, his famous *habits of the heart* were also *reflective* capacities, instrumental for securing republican liberty.

More generally, with the exception of Rousseau's anti-modernism, republicanism does not really concern itself with alienation or 'homelessness', unless or until such sentiments become salient for the maintenance of civic virtue and liberty. Also, the moralistic description of the good citizen is, by and large, lacking in republicanism. The individual capable of seeing beyond himself is certainly an ideal. But except in Cicero it is tied, as already noted, to the possibility of prudential ap-

13. If, broadly, philosophical communitarians confuse republicanism with conventional Aristotelianism (often *via* Hegel), sociologists read into it the emphasis on group, norm and role and the critique of modernity and industrial capitalism of some classical sociology (often through American pragmatism). In particular, see Bellah et al. (1985:30-31,196-218,252-71), and, rather more conservatively, Selznick (1987:454) and Lasch (1991:170-76). William M. Sullivan, co-author of *Habits of the Heart* and *The Good Society*, connects his American discontents and hopes for spiritual recovery with a long elaboration of "the civic republican tradition", that "wisdom that sees a self-governing community, one whose public life embodies and in turn enhances the moral quality of its members' lives, as a great ... human achievement". It emphasises "the value of politics as moral cultivation" and its "freedom is ultimately the ability to realise a responsible selfhood". The "language of civic republicanism addresses directly the craving of the human self for a life of inclusion in a community of mutual concern". Sullivan asks "[h]ow ... is civic life possible? ... how can we conceive of individual fulfillment as realised through mutual commitment to a common good?", conceiving the latter as "the peculiar human satisfaction of feeling oneself to be a significant member of an ongoing way of life that appeals because of its deep resonance of beauty and meaning". He loosely refers to Jefferson, Paine, Tocqueville, Montesquieu, Rousseau, and Hannah Arendt to support his claims (Sullivan 1986:1,21,159-64).

preciation of the communal nature of liberty and the need for solidarity and to the manner in which private and public interests are interlinked. Moreover, the republican tradition also stresses the *fragile* character of this prudential identification with the common good. Seeking republican ancestry for a new *Moral Commonwealth*¹⁴ ignores republican obsessions with such eternal human weaknesses as the apathy and selfishness of the masses and the thirst for power and honour of the great. Virtue, with or without *villages*, is not natural, and corruption is not a failure of an inherent community sense.

III.

A third set of ways of getting republicanism wrong can be summarised as misunderstandings of the republican idea of *autonomy*. The most important mistake here largely derives from the modern reception of Rousseau. Again, this reception does not always correspond to what Rousseau actually thought, in particular it hardly taps the proper relation between Rousseau's justification of political order by way of a general will and his republican theory of virtue and citizenship. However, if Rousseau's well-known figure is accepted at face value as a description of the point of popular exercise of personal and political autonomy, it is not typical of the republican tradition. To recapitulate, Rousseau's classical dilemma was that, on the one hand, a person is only really free when consciously willing the rules according to which he must live. On the other hand, we live in societies, and hence the only way to be free is to will the same law for everybody, asking the proto-Kantian right questions, and doing, collectively, what is evidently rational.

But republicanism is not really about rational self-direction and self-legislation. Clearly, there is in the tradition an important ideal of the morally and politically mature citizen who is capable of showing, together with others, the prudence and determination necessary for the republic. Such a person is of a superior cast, more worthy of respect and capable of self-respect than the private 'idiot', the name used by the Greeks for those unfit to govern themselves.

Tocqueville took over Rousseau's moral liberty, but transformed it into a rather different, aristocratic individualism, hoping for a spin-off from politics adding to the liberty of private life. So did, in different ways, Sidney, Cato, and Jefferson.¹⁵ But these concerns, and most certainly the idea of the *moral* necessity - as distinct from political necessity - of being able to consent to the rules of one's collective, were but occasional side-stories to the essentially political project of republicanism, and often late-comers with a Christian and liberal flavour. In the next chapter, we return to the doctrines republicans were in fact supporting. To anticipate, they were about *political* autonomy through collective self-government as the means to protect eve-

14. As does Phillip Selznick, in a book thus titled (Selznick 1992).

15. And, in the stoic sense of mastery of Berlin's *inner citadel*, Cicero.

rybody's liberty; about the ability of individuals to influence the shaping of the exact content of this liberty and the historical institutions embodying it; and about the legitimation (hence stability) of constitutional settlements as inevitably contingent compromises between interests and viewpoints.

There is certainly no question of republicanism advocating the continuous formulation of a comprehensive general will. Nor does Rousseau or any other writer support the idea that such ongoing self-government, with its severe and time-consuming demands for participation in collective deliberations, enjoys primacy over individual liberty, whether or not defined in terms of (natural) rights.¹⁶

The very ideal of popular participation is, in fact, easily misrepresented.¹⁷ Although the argument about the necessity of citizens' activity importantly defines the republican tradition, it is integrated into a wider concern with the durability of the republic and the fragility of liberty. Popular participation is only one element, for instance in the teaching of *mixed government* and the general republican obsession with the balancing of power and the checks on ambition and passion. Again, while the possibility of civic-mindedness in and through participation is possible, republicanism is just as much about the many inherent obstacles to this possibility, even to the extent that participation in certain of its most sinister forms may be one of the prime dangers to liberty.

16. Many critics of the tradition continue to believe that participation is *primarily* an educative device to create more rational, public spirited, citizens (e.g., Herzog 1986:486). The stress on the *primary* importance, in political participation, of autonomy as rational self-direction is seen in programs for "republicans [to] ... so constitute the polity as to ensure that its decisions (...) are framed in the form of ... laws which all citizens have participated in formulating and to which, in consequence, all have given their free and equal consent" (Geise 1984:31). Similar views abound, for instance, in Sullivan (1986) and Oldfield (1990). While, in most of these writers, 'autonomy' is married to 'community', in the sense of collective interpretation of a substantial good, others emphasise a more rationalist-Rousseauian conception (Habermas 1992b:3-5), feminists often in order to criticise 'gendered' ambitions to transcend all differences (e.g., Young 1989:252-55; but cp. Dietz 1992:77). Some would-be republicans stress collective decision making at the expense of rights, provoking the accusation that republicanism entails facile beliefs in the possibility of consensus (Herzog 1986:487-88). Barber, whose *strong democracy* is defended in republican language, cannot be accused of confusing politics with the transparency and stillness of perfect consensus. Instead, he appeals to "politics in the participatory mode", with "[s]elf-government carried out through institutions designed to facilitate ongoing civic participation in agenda-setting, deliberation, legislation, and policy implementation". Here, the problem of consensus is suspended, as such "politics deals with public disputes by subjecting them to a never-ending process of deliberation, decision, and action" (Barber 1984:150-51). Shumer's republicanism, in a similar vein, is about citizens "work[ing] out together ... where they are going" (Shumer 1979:20).

17. To "classic republican thinkers ... participation, through which the citizens control the state, is the right of all. So far as practically possible, everyone is involved in deciding all public matters" (Howe 1991:125-26).

As regards the content of the ideal, 'eternal vigilance' certainly is not only, or in several authors even primarily, participation in political deliberation, let alone actual decision-making. Nor does the ideal of political equality, even when gradually extended to something remotely similar to modern democracy, entail that everybody is expected to participate to an equal extent or in the same fashion, let alone to want to do so. In fact, the tradition starts with a stress on the *different* manifestations of virtue to be expected from different categories of people.

IV.

A fourth and final way of misunderstanding republicanism, linked to some of the points mentioned above, but meriting special mentioning in view of its influence, is the notion of politics for the sake of what we may call, for want of a better term, *political constructivism*. A very important aspect of republican discourse, in many ways well described by Pocock as far as his analysis holds, classically conceptualised by Hannah Arendt, and central, as we shall see, to my own emphasis on *fragility*, is the idea of the republic as an artificial, contingent structure, created and inserted into 'secular time'. Also important, as already noted, is the manner in which political rhetoric and narrative contributes to the formation of the memory of the republic as a discursive entity, a (nationally) shared articulation of meaning and collective mnemonic act.¹⁸ However, there are important reasons to resist a tendency, helped along, one feels, by theorists who confuse sophisticated methodologies and ideas about political historiography (be they neo-Wittgensteinian or Foucauldian) with a tradition of political thought. Republican discourse, to put it bluntly, is not a prototype of any of the postmodern doctrines currently in vogue,¹⁹ the *res publica* was not a collective subject articulation, and the experience of it had an existence independently of those at any rate heterogeneous and overlapping rhetorical frames employed, often strategically, to generate civic motivation.

Machiavelli, Sidney, Montesquieu, and Tocqueville in each their way exemplify the important republican recognition that a political order is a legal, constitutional, and, in a certain sense, cultural product of human design. Machiavelli - and Arendt of course - also thematize the degree to which such a design, because of the contingent nature of human action, is difficult to control or predict completely. Sidney, Jefferson and Madison all note the contingencies of historical compromise, the limits of human reason and political imagination, and the necessity of future

18. See, in particular, Bruce James Smith (1985).

19. Shumer, foreshadowing recent poststructuralist treatments of Hannah Arendt's theory of action and judgement and reading what he finds into Machiavelli, sees republican action as the radical creation of human *meaning* in a world where "there are no absolutes, no transcending values by which to judge actions" (Shumer 1979:19). And the idea of political action as a Foucault-type power game, the stakes of which are the constant generation of 'differences' has finally heralded the arrival of a poststructuralist *polis* (Dalmayr 1977; 1984).

readiness to amend and revise the shape of the republic, including the structure of rights. However, we also saw that republicanism had no problems accommodating itself to doctrines of natural rights, and, again, that common liberty as the *point of it all* of a republic was remarkably and uncontroversially consistent through the centuries. This is all very far indeed from hazy notions of politics as the primordial positing of difference, instituting the 'impartial discourse of liberty' only then for citizens to identify with.

3. Philip Pettit - Republicanism vs. Liberalism

Having spent some energy extracting republicanism from a range of embraces, the battle over conceptual territory is still only half won. The reconstruction of republicanism as a discourse of 'negative liberty' and 'instrumental' political activity makes it obviously vulnerable to charges that it is not very different from liberal doctrines, or perhaps only different in non-interesting ways because unchallenging, or outdated, or just very unattractive - representing values that liberals have good reasons to resist. I shall deal with these questions in the next chapters of this thesis. The following chapter contains attempts to synthesise the historical contrasts, on four analytical dimensions, between republicanism and the various early Enlightenment doctrines of individualism, which we may or may not denote as 'liberalism', and it seeks to suggest, in this light, what constitutes the main legacy of republicanism. In the Conclusion, I briefly engage in a more principled discussion of the extent to which republicanism in fact constitutes a problem for contemporary liberal political theory. Before doing this, we shall look at a sophisticated but - so I shall argue - still unsatisfactory attempt to delineate republicanism from liberalism, which claims a distinct concept of liberty for the former.

3.1. The 'Resilience of Liberty'

It makes sense to talk of republicanism as a distinct historical tradition of political thought, understood as a type of argument and way of conceiving the political condition, including the nature of the actors seeking to operate within it, which shares a number of fundamental values and assumptions about reality. I have argued, however, that the particular delineating searchlight of Baron's and Pocock's *civic humanism* fails to capture the tradition. A quite different searchlight has been proposed by Phillip Pettit. It shares my resistance against the notion that republican discourse owes its long life to a widespread and die-hard nostalgia for a mythical past of human fulfilment through politics. We shall look at Pettit's discussion in some detail. However, before turning to his work, it is worth considering the republican concept of liberty which has been presented so far.

The core of republicanism is the notion of liberty as a collective affair, a common way of life, where each citizen is a partaker and contributor to an ongoing, fragile, and essentially artificial project of mutual assurance and protection. It connects the idea of a created legal status, involving a certain, historically developing

number and type of guarantees, immunities, and protected spheres of action, equally enjoyed by all citizens, with the idea that this status must itself be created, protected, and realised and that this, to an important degree and in various ways, requires the political involvement of citizens. Citizens enjoy their status, their *libertas* - essentially the possibility and actuality of a situation of peace and security in which they may seek to realise their private projects as they please without interference - on the condition, not only that they respect the equal right of others to do so, but also that they are willing, from time to time or even often, to leave this peace and security, and act politically.

By analytical philosophical standards, republican liberty is a rather muddled conception. In the tradition, it is typically used to refer to at least two separate phenomena, sometimes distinguishing between them and sometimes not, and sometimes referring to one of them only. Also, both phenomena may be looked at from the point of view of a collective, such as a people or a state, or from the point of view of individual citizens. One phenomenon is popular participation in political power, conceived in a very broad sense - we may call it republican self-government or political citizenship. The other is the existence of a legal framework which either implicitly or, more so in later formulations, explicitly involves equality before the law, security against a range of abuses of power and privilege, and a positively specified set of elements defining the status, the 'rights' and duties of a citizen - we may loosely speak here of republican constitutionalism and legal citizenship.

What links the two phenomena is the underlying idea of *not being ruled*, or absence of slavery. It is the condition of not having to live (or die) at the will and discretion of someone else. Not being ruled is a feature of a lawful, constitutional state. Such 'rule by law, not men' may in principle exist in a monarchical state where a wise legislator has given laws with a view to the common good, rather than his own good. But in general, and empirically speaking, enjoying this lawful state requires popular self-government of some sort. The failure to enjoy self-government and to participate in it is associated with the danger of subjection, by tyrants and despotism at home or conquerors from abroad, and with the inability, where laws are no longer protected and respected, to enjoy one's status securely, or at all.

The conflation of the two ideas is not total. Both Cicero and Machiavelli occasionally spoke about the liberty 'of the Greeks' (in self-government) as well as of that liberty which, whatever the political regime, is a question of lawfulness and the common good, of republics *bene ordinate*. Montesquieu started to distinguish, in somewhat confusing terms in retrospect, between the political liberty of the person (experienced as security and defined by law), and the political liberty of the constitution. The latter was liberty, not by virtue of political (democratic) self-government pure and simple, but by virtue of a balanced constitutional and institutional set-up that secured *moderation*. The relation between the two was close but by no means determinate, as good criminal laws could yield *de facto* security in

an otherwise immoderate regime. Rousseau and Tocqueville, in each their way, and often without complete consistency, distinguished between liberty as a status of security of property, privacy, and person, and on the other hand liberty as political self-government and political action. Separating the two aspects too much, as in Constant's famous essay, may eventually have been bought at the expense of jeopardising the central intuition of a close connection, empirically as well as normatively, between the two types of liberty, and the stress on private enjoyment of security as a collective affair of mutual legal assurance, backed by collective political action.

Through history, republican liberty has also referred more loosely, and with a variety of connotations, to an integrated vision of a free way of life, or, as in Machiavelli, to a free state. Components of this way of life have also been cultural and psychological, including the existence of a public sphere of political life, the quality of civic spirit characterising this sphere, and the inclinations and dispositions (determination, vigilance, independence of mind, critical sense) of the individuals constituting it, all lending to the idea of liberty additional connotations of what is required to sustain it, as well as which moral obligations it entails.

Finally, different versions of individual autonomy or moral self-directedness can be found. At times, such autonomy is primarily an independent value - the type of private existence republican liberty is meant to secure. More often, such personal autonomy, as in Sidney, Jefferson, or Tocqueville, is also part of that wholeness of character which helps sustain civic virtue.

Is there, then, a separate republican *idea* of liberty? At the level of fundamental value ideals, I do not think that there is. However, republicanism, like a very large part of liberalism, employs a *conception*²⁰ of the liberty concept which is *law-centred*. And I shall go on to argue that republicanism is by and large alone in employing a *fragility-centred* conception of the latter.

It has been suggested to view liberty as a triadic relation concept.²¹ If we understand liberty to denote the capacity of some agent, in the absence of some restraint, to do some action (enjoy some activity, state of affairs, etc.), few uses of the term will surely be left out. In our context, however, it makes sense to rely on a less broad idea to capture the separate intuition which unites liberals and republicans.²² The departure point, here, is the idea of individuals being *left alone* - not being hindered in a certain range of activities.²³ This base line still leaves much

20. For the distinction between concept and conception, see Rawls (1972:5); Lukes (1974: 26-27); cp. Connolly (1983:10ff).

21. Oppenheim (1961); MacCullum (1972); Connolly (1983:140-78).

22. But which leaves out, for instance, the nationalist dictator who wishes 'his people' to be 'free' to 'live their way of life'. Here, we do not talk of individuals, and, whatever the restraint, there is no choice between a range of actions.

23. Including political activities, as that subsection of individual liberty which concerns the unhindered access of individuals to choose to pursue different politi-

scope for difference, most of which, extensively discussed in the literature,²⁴ I shall leave aside.

Phillip Pettit, who shares many of the points made above about what republicanism is not, has suggested that the tradition is characterised by an idea of liberty as *resilient*. As opposed to a conception which simply says that liberty means a (specified) state of non-interference pure and simple, a republican conception

would say that the absence of interference is not enough, what is also necessary is that the agent be protected against interference, that she be given guarantees which help to insure against interference²⁵

The security of non-interference is the collective liberty of *the city*: a defined area of protected action which everybody agrees to grant each other, maximised only collectively and equally as the degree and type of security which the walls will hold, so to speak. This is distinct from the liberty of *the heath*, the actual exercise (or attempted exercise) of action - maximal in a situation where *no others are around*, or where superior strength is enjoyed. Exercise of one type of liberty tends to diminish liberty of the other type. Pettit's idea of republican liberty first of all is that of liberty as secured and constituted by law. As we have seen, this is indeed central to all the republican writers discussed. So is, in fact, the idea of liberty of the heath, only this by the name *licentia*, license. The existence of law which works effectively and equally for all transforms liberty as a mere formal opportunity concept (freedom to do or be what one wants, *if one can*), to an ability concept (assurance of being able, unhindered, to do or be something - necessarily a *specified* range of actions).

Pettit, who has developed these ideas in much interesting detail,²⁶ claims that resilience is what distinguishes the negative republican idea of liberty from the negative liberal idea. According to him, the latter also often stresses the importance of law, but sees it as a means to maximise the equal enjoyment of liberty by imposing a measure of constraint on its exercise: Liberty, from the point of view of the individual, remains diminished by law. Pettit elaborates a very important point, first made by Skinner against Hobbes' idea of liberty as absence of external impediments to motion, and the liberty of a citizen as the famous silence of law.²⁷ A

cal courses of action, however their specific range be defined.

24. For an overview, see Connolly (1983:140-78) and Kukathas (1993).

25. Pettit (1993a:165).

26. Braithwaite & Pettit (1990:54-85); Pettit (1989; 1993a; 1993b; 1993c; 1997:17-79).

27. In fact, Skinner stresses not only the way that liberty as the status of an individual citizen status is legally constituted, but also the way law may have to coerce individuals to be free, by having to "force us out of our habitual patterns of self-interested behaviour, to force us into discharging the full range of our civic duties, and thereby to ensure that the free state on which our liberty depends is itself maintained free of servitude" (Skinner 1990:305).

few other liberals have followed Hobbes' definition, most notably Bentham and, more recently, Isaiah Berlin.²⁸

The trouble with Pettit's analysis of a distinct liberal idea of liberty as simple 'non-interference', including legal non-interference, is that it renders the liberal camp quite small. The point has already been noted in the historical chapters but bears repeating. Not only was the republican conception of liberty not 'positive' in any of the familiar senses noted above. Its conceptual relation to legal status and constitutionalism was virtually undisputed by anyone, with the sole and uninfluential exception of Hobbes, in the very period where the republican analysis of the political condition and the place of civic virtue began to be disputed. Law, constitutionalism, and political institutions as conditions or embodiments of civil liberty simply was not an issue.

Thus, we saw that Locke's concept of liberty was distinctly law-centred, and contrasted to the arbitrary condition of slavery. Hume linked liberty to action "by general and equal laws, that are previously known to all" and to the superior quality of the British constitution. Indeed, criticising republicanism with its own concepts, Hume scornfully claimed that "it may be affirmed of civilised monarchies, what was formerly said in praise of republics alone, *that they are a government of laws, not of men*". Kant, most prominent of course, contrasted the "brutish freedom" of the "savage state" of warring states or individuals with the "calm and security within a law-governed constitution (...) a civil commonwealth", a condition which he termed "*rightful freedom*". Constant (who is placed on the liberal side of his fence by Pettit), in a French, post-revolutionary context, discussed individual liberty, contrasting it to "arbitrary power", as something guaranteed by constitutions and powerful "safeguards ... means of defence sanctioned by the written law". Laws create security and peace and constitute "bonds" under which is nurtured "the well-founded hope of living free, under the shelter which justice grants to the citizen". And Mill, at a time when, according to Pettit, the liberal landslide had happened, spoke of "personal liberty ... which belongs" to a person "by law", as "*legal rights*", and of "the license of disobedience", contrasting 'personal' with an alleged "natural liberty of mankind".²⁹

28. "By Liberty, is understood ... the absence of externall Impediments: which Impediments, may oft take away part of a mans power to do what hee would; but cannot hinder him from using the power left him", Hobbes, *Leviathan*, 14. To Bentham, a law must be judged according to "the mischief it does by the restraint it lays on liberty" (Bentham, *Principles of Legislation*, VI,13, cp. Appendix B, I,3). For Bentham and his influence, see Pettit (1997: 41-50). For Berlin's reference to Bentham and Hobbes and employment of their concept, see Berlin (1969b:123).

29. Locke, *Second Treatise*, V,22; Hume, 'Of the Origin of Government', 'Of the Parties of Great Britain', 'Of Civil Liberty', *Political Essays* (pp.23,42-44,56, italics in original); Kant, *Idea for a Universal History with a Cosmopolitan Purpose* and *Perpetual Peace*, in *Political Writings* (pp.48,99, italics in original); Constant, *Principles of*

Pettit, of course grants that many liberals (prominently Hobbes) accepted that liberty needed to be restricted in order to create the possibility for people to be able to live peacefully in society. This is not helpful, though. Kant's and Mill's distinctions between natural or 'brutish' liberty on the one hand and civil liberty on the other may reflect that the term liberty (or freedom) was used to denote relatively undesirable social states. But conceptually, the distinction is parallel to the ancient one between *libertas* and *licentia*. The old writers were perfectly capable of understanding the concept of 'liberty as non-interference'.

Pettit's reconstruction does hit Bentham's utilitarianism with its ultimate disregard for individual rights, as, clearly, one may enjoy a high level of individual or collective utilitarian welfare without having real, i.e., mutual and secure, republican liberty. Also, liberty as strict non-interference or 'silence of law' may refer to certain strong contractarian natural rights theories, in particular that of Nozick who, in this respect, is a heir to certain nineteenth century *laissez faire* doctrines. Here, the notion that the person who enjoys liberty owes nothing to anyone (and may expect rather little in turn), does seem to epitomise a distinct, libertarian and marked-orientated twist to the value ideal of negative liberty.³⁰

Now, I am sure that there does exist a value ideal on the right side of contemporary and historical liberalism of what we might call liberty-with-risk. But, depending on what we mean by 'risk', or the willingness to do without 'resilience', the distinction does not really separate so many liberals from Pettit's project. Even die-hard market Darwinians would hardly want to risk the absence of a mutually recognised legal framework securing property rights, inviolability of one's person, or freedom of contract. They would not want to have to compete for *that*. The point even of Hobbes' minimalism, it will be remembered, was to legitimise the security afforded by a legal framework (enforced, of course, by the sword of a mighty sovereign, in whose absence it was 'but words'). If a difference exists between a language of liberty which emphasises security or resilience, and one that emphasises risk, in this basic sense,³¹ modern liberal thought no less than the republican tradition clusters around the former, not the latter. This, incidentally, is why even libertarianism is a theory of rights. Rights is simply the concept in which the value of secu-

Politics Applicable to all Representative Governments, 18 in *Political Writings* (pp.289-90); Mill, *Utilitarianism*, Chap. 5 (p.45).

30. In a further development of a set of contrasts between liberal and republican models of political life, voting behaviour, and politicians, Pettit goes quite far in one-sidedly equating market metaphors of competition and bargaining with liberalism (Pettit 1993a:171-79).

31. The latter may only survive in a pure form, beyond the borders of both liberalism and what most would define as libertarianism, as the sentiments of right-anarchists on the ideological fringe of the National Rifle Association, or of a street fighter surviving with his gun and his blade, both of whom challenge the very idea of state authority.

erty under the rule of law, in most of its various aspects, is nowadays deposited. That Nozick may be criticised, from Pettit's perspective, because of his moralistic and unpolitical conception of rights, is another matter.

However, although very few political theorists would want their conceptions of liberty, however thin, to be un-resilient, in the sense of un-backed by a law that protects against domination, we may speak of resilience in a broader sense. Here, the contrast is between those liberals or libertarians who connect basic resilience with the values of radical self-reliance, of taking your chances and accepting your defeats, and those - like Rawls - who connect it up with various all-purpose material means, rendering the realism and the success of free choices more secure or at least likely. I return to the distinction below.

Yet, Pettit's line against Rawls, as a typical representative of liberals "on the left", is that the latter entertains a conception of liberty which "is directly continuous with that of Hobbes and Bentham". According to Pettit, Rawls implies that the state infringes on liberty in the pursuit of equal rights, including liberty rights, and that this is the meaning of a passage in *Theory of Justice*, where Rawls says that "liberty can be restricted only for the sake of liberty".³² This is misleading. In Rawls, the creation of rights does not restrict liberty as much as define and (equally) distribute the mutually possible liberty areas of a society, thus maximising the prime value of law-constituted equal liberty in a liberal polity. Again, if there is a terminological difference here, with the introduction of rights, there is hardly a conceptual one.

It is true that the creation of one right (say, to social provision) restricts another right (say, to the economic fruits of one's industry). However, the rights-conflicts and rights-balancing which are thematized in contemporary political liberalism, and which require some liberties to be 'restricted', are by no means new. In particular, it is not at all absent in republican discourse. Thus, in a Roman language of law-constituted *libertas*, it would make perfect sense to say that *libertas* (once defined and installed) might be restricted by new laws, including some that imposed new, equal obligations on all. Also, one part of *libertas*, one of the liberties, as the old republicans could also say (as does Rawls), i.e., one area of activity hitherto defined as legitimate and protected, could certainly meaningfully be said to be restricted for the sake of another in whose would-be 'silence' liberty had so far existed. In particular, laws could restrict the liberty of some (i.e., the strong or wealthy) who could previously act 'freely', for the sake of the liberty of others (i.e., the poor).

Although the political value ideal of the Greeks and the Romans was the law-constituted liberty of the city, there is ample textual evidence that they also understood and used the Hobbesian idea of liberty as doing what one wants if one can

32. Rawls (1972:302), cited from Pettit (1993a:168), and Pettit (1997:50).

(indeed, this is where Hobbes got the notion in the first place, only stripping *licentia* of its moralistic, derogatory flavour). Bracketing the changing texture of constraints on what counted as decent, proper, natural, or Christian behaviour in premodern cultures, the ancients were perfectly capable of conceptualising the human value of freedom from restraint and the ability to do as one wished without being hindered - also not hindered by an inconvenient law. But they also realised that in order to be certain of enjoying such experiences of freedom along with their fruits, it was imperative that spontaneous human behaviour be constrained and hedged by the means of law. Because men were not angels and because human virtue was inadequate, spontaneous action, unfettered by law, would quickly take the form of *licentia*, with its dual connotation of moral depravity and general insecurity in a war of all against all.³³

When, in Rawlsian liberalism, the values of equality and liberty as equal effective liberty in a system of justice are spelled out in a legal constitutional context (which is *the* context of political liberalism), they also translate to *libertas* as 'basic liberties', or legally defined aspects of a citizen's rights. Here, it is true that one liberty's legal constitution (i.e., free speech) is also always, from a different point of view, another law's (i.e., about 'hate speech') silence. However, in this respect, and bracketing differences of meaning between modern rights and the old *ius*, there simply is no substantial conceptual divide between a Roman and republican language of legal citizenship as delineated in a constitution and a modern liberal one; between the language of rights and respect or disrespect for rights on the one hand and the language of *libertas* and *licentia* on the other.

The key value and the key concept of modern Rawlsian style rights-liberalism, which also informs its criticism of utilitarian disregard for the sanctity of the individual and of libertarian disregard for the unequal actual enjoyment of the underlying basic value of liberty, is the same 'resilient' or secure liberty as in Pettit's version of republicanism. It is also what Kant meant by *Recht*, namely the specified legal relations between citizens in a state, which defines and delineates (as Freedom with a capital F, as it were) the *reasonable* and *possible* equal enjoyment of 'freedom' in the broader sense of normatively unpredicated, unimpeded activity. Thus, to Kant, the end of government is

the *right* of men under coercive public laws by which each can be given what is due to him and secured against attack from any others (...) the whole concept of an external right is derived entirely from the concept of *freedom* (...) *Right* is the restriction of each individual's freedom so that it harmonises with the freedom of everyone else (in so far as this is

33. Pettit grants that republicans could use 'natural liberty' or *licentia* as a concept - and uses this to suggest that the existence of this concept facilitated Bentham's invention of 'modern' liberal liberty as non-interference (Pettit 1997:43).

possible within the terms of a general law]. And *public right* is the distinctive quality of the *external laws* which make this constant harmony possible. Since every restriction of freedom through the arbitrary will of another party is termed *coercion*, it follows that a civil constitution is a relationship among *free* men who are subject to coercive laws, while they retain their freedom within the general union with their fellows³⁴

As also suggested by our account of the republican encounter with natural rights and state of nature discourse in the American debates, Pettit's depiction of the 'isolationist' and anti-social character of contract theories reflects a misunderstanding of what most of the writers had in mind with their use of the term (natural) liberty in a preconstitutional state. To Hobbes, the liberty of the law of nature was meant as an empirical description of a state of affairs where no sovereign was empowered to institute social peace. It was not a *moral* right, let alone a socially *valuable* phenomenon. On the other hand, when writers like Jefferson, Paine and Madison spoke of men as born equally free and endowed with certain natural rights, this did refer to the moral status of the individual and to a more or less comprehensive understanding of divine intention with, and restrictions on, the conduct of men towards their fellows. But again, such liberty was not a *political* value ideal. Locke, Jefferson, Rousseau, Kant and a host of other writers shared the recognition that the liberty worth craving for for individuals, conceptual differences aside, was the liberty of a constitutional state.

The point is certainly well taken that contractarian political theory should not lead us to entertain notions of rights as valuable private liberty possessions which individuals trade for something else. Many authors of the Enlightenment toyed with ideas of pre-civilised spontaneous order, which represented a marked difference to the Renaissance conception of a pre- or extra-civilised state as chaotically violent. However, neither in Kant, nor Rawls, nor most of the American discourse does the contractual device rely on any historical assumptions of previous self-sufficiency in a state of nature, which individuals may seriously speculate whether or not to give up. In stead, the individualism of contract theory served to model the idea of civic liberty as a mutual construction whose exact content had to be democratically established, so that its legitimacy derived from the more or less active consent of all. The difference between republican and Rawlsian, as well as most earlier contractarian liberal conceptions of citizenship is indeed important, but it does not consist in a disagreement on its essentially mutualist nature.

This said, the existence of anarchist and libertarian traditions of political thought does demonstrate the possibility of liberal discourse sliding into conceptions of naturally free, self-sufficiently acting agents. In Locke, Sidney and Ameri-

34. Kant, *Theory and Practice*, in *Political Writings* (p.73).

can discourse, the language of natural rights, consent, and the right of resistance was used to demonstrate the legitimacy of *changing* one (despotic, monarchical) government for another (republican). Madison was one of several clearheaded writers who pointed out how basing the legitimacy of the state on the unanimous consent of all to 'give up' their executive right of self-defence in a state of nature would make political society impossible. In a period of political founding, revolutions, and civic unrest, this was plainly obvious. However, in a later, nineteenth century context of capitalist civil society, it did become possible to shift the emphasis from the contingency of political structures to the naturalness of the market, taking the minimal rules of contract for granted in a manner that neither Montesquieu, Smith, nor Hume could ever have done. Also, such circumstances placed a premium on the willingness to take risks and compete, to pursue one's opportunity for happiness at the expense of others, but for the good of all. Once law, constitutionalism, and mutual restraint could disappear as constitutive empirical conditions of any form of reasonable and valuable liberty, not least the freedom to acquire and keep property and dispose of it by means of enforceable contracts, it became a great deal easier to construct moral theories which seriously questioned the legitimacy of the state or the reasonableness of civic obligations and solidarity in it.³⁵

In his new book, Pettit is clearly aware that a great many of the authors which are usually called liberal become republicans in his view of the world (i.e., Locke and "the French juridical tradition"). He also, half-heartedly and in foot note fashion, grants that "Rawls can sometimes be read as endorsing a similar view of law and liberty" (as that of Hayek),³⁶ wisely refraining from a substantial encounter with the highly juridically inspired main stream of contemporary liberal theory (Dworkin, Raz).³⁷ But apart from Hobbes, Filmer, "tories who were opposed to American independence" (surely neither Hume nor Burke),³⁸ Bentham, and a few relatively obscure followers of the latter, i.e., William Paley and John Lind, few writers remain. The absence of further examples from the last two centuries is conspicuous, to put it mildly. And the claim that "the conception of liberty as non-interference came to replace the received republican notion at the end of the eighteenth century", or that liberals, despite their being "a broad church ... most of them unite in endorsing the modernist conception of liberty" is indeed mysterious. What, we may ask, should we say of the entire French tradition, including Constant,

35. The rise of industrial capitalism also, incidentally, facilitated the emergence of utopian socialist and Marxist conceptions of a civil society without law and state institutions.

36. See Hayek (1960:143,155).

37. Pettit (1997:10).

38. Burke contrasted the ancient, constitutional, and regulated "law and liberties" of the English with "liberty in the abstract" and the unruly and violent "new liberty of France", Burke, *Reflections on the Revolution in France* (pp.90,119). For Burke's distinctly law-centred position, see also Kukathas (1993:29).

Kant's and Hegel's numerous nineteenth century followers and developers, or John Stuart Mill, Green, and Hobhouse. Despite the analytical merits of Pettit's distinction, the historical contrast between liberalism and republicanism is untenable.³⁹

As noted in the previous chapter, libertarian and market based conceptions which diminished the importance of law and constitutionalism certainly partook in the decline of republican conceptions of politics. However, by employing resilient liberty and law as a historical line of division, Pettit begins too late in the history of ideas. In particular, he misses the great discursive battles which took place from the early Enlightenment over the meaning of virtue, commerce, representation, political architecture, and natural rights, and over interpretations of the conditions and values of the ancients versus the moderns. Thus, he fails to place writers like Locke, Hume, and Hamilton in the non-republican camp, or to see the ambiguity of writers like Montesquieu, Madison, Adams, and Smith, all of which either denied or consciously diminished the importance of civic virtue.⁴⁰

3.2. The 'Intangible Hand'

There are more aspects to Pettit's development of the resilience of liberty. A second, 'social space' aspect is discussed in a great deal of very interesting detail throughout Pettit's work. For instance, it has been applied to the sociology of crime-deterrence and punishment.⁴¹ Resilience he argues, is also a question of liberty being secure and robust in the sense of the actually forthcoming respect for everybody's liberty, and, furthermore, in the sense of the psychological state of expecting security, i.e., the opposite of the fear or apprehension of trespassing, which may ensue in a public culture where the existence of non-domination "will tend to become a matter of public belief". Whereas the existence of law and legal sanction is a step towards this valuable state of affairs, it also has a significant extra-legal aspect which has to do with the structure of expectations and generated motivations which characterise the social space of a polity. Briefly, Pettit has in mind various social and institutional mechanisms, which have in common their reliance on the motivational logic of exposure, the risk of shame and, most generally, the "self-interest in ... reputational welfare". One such type of mechanism is the jury, another is open voting. Together, such elements of mutual control and moral policing contribute to what Pettit terms "the intangible hand", which "helps to nurture a pattern of behaviour by holding out the prospect that its manifestation will earn the good opinion of others and/or the failure to manifest it will earn the bad".⁴²

Pettit makes important points here. In Montesquieu and some of his Anti-Federalist followers, we saw that absence of fear entered into the very definition of

39. Pettit (1997:21,45,50).

40. Pettit (1997:102).

41. In *Not Just Deserts*, Braithwaite and Pettit (1990).

42. Pettit (1993a:176; 1997:166,250).

individual political liberty. Also, the reliance on mechanisms of social control are evident in Cicero, Machiavelli, Harrington, Sidney, Rousseau, and Montesquieu, as well as in American writers like Madison. As Pettit rightly notes, republican thinkers are not, by and large, concerned with why and in which moral state individuals decide to become virtuous, as long as the outcome is that they *behave* virtuously. However, I have two reservations about Pettit's employment of the idea:

One concerns the contrast to liberalism. The stress on actual security and opinion of security does serve to delineate Pettit's republicanism (which, in the 1997 book, includes Shklar's early 'liberalism of fear') from libertarian market doctrines and survival of the fittest and *laissez faire*.⁴³ Although both Hobbes and Bentham were highly interested in probabilistic security,⁴⁴ it may also be noted that the former's utilitarian calculus has no place for the essential human experience of fear. But Pettit's orchestration of the contrast again misses an important historical debate. This is the liberal criticism of the Enlightenment of the excessively intolerant and interfering political life of the ancients. 'Enthusiasm', collective mobilisations of virtue, and social control was seen as either positively dangerous, or conducive to a type of liberty which was decidedly less valuable than that of modern ages. What Hume and Montesquieu feared, what Harrington unreflectively praised, what Rousseau consciously revaluated, and what intensely concerned Jefferson, Ferguson, Madison, let alone Tocqueville, was exactly Pettit's 'intangible hand'. Enlightenment writers believed that the norm control of the ancients constituted intrusion into the most intimate circles of the individual (producing fear rather than a feeling of security). Thus, the new accounts of commercial civil society and political architecture were tailored to suggest the possibility of a life where fewer people acted in such irregular and passionate ways as to create fear in the first place; or where such action was accepted as inevitable and checked or channelled accordingly by institutions that were superior to those of the ancients.

This leads me to a second reservation. The propensity to tolerate and live with (religious) diversity, and the capacity to practice a more distancing, cool civility were early liberal values which were also in fact taken seriously, along with the competing accounts of social space and social virtues on which they depended, by late republican authors such as Ferguson, Jefferson, and Tocqueville. Liberals also evoked ideas of civil society and institutional designs which continued the concern with the generation of social expectations and the power of opinion. But generally

43. But there is no contrast to contemporary liberalism. As regards the value of security of liberty, Rawls is typical in his move, parallel to that of Pettit, from the perspective of the individual beholding his inviolable constitutional rights, to that of the collective beholding a basic framework, surrounded, in due course, by a political culture characterized by a shared sense of justice. As noted in Chapter 2, the trouble with Rawls' conception is its lack of sociological realism. See Rawls (1972:453-512).

44. See Pettit (1997:46-47).

speaking, liberals in the past as well as today would not tread the territory of "institutionally designed pressures" as lightly as does Pettit, or use with the same nonchalance the instrument of coercive law. The question is, and we return to this, if the republican tradition in general, and modern versions of it in particular, would do so either. Pettit's idea of social space and what he calls "civility" is about "mounting the level of vigilance, and therefore a level of exposure to sanction". He associates it with socialising mechanisms which reinforce awareness of non-domination (his version of Rawls' sense of justice in a well-ordered society), and his position implies that social control, like state intrusion, constitutes a non-dominating form of interference if done "according to opinions of a kind that I share". In making such claims, Pettit relies on questionable assumptions, discussed below, about a relatively accessible and easily constructed *common good*, i.e., an institutionally embodied, culture and group sensitive, and consensually legitimised conception of *libertas* as a system of non-domination.⁴⁵

The trouble, of course, is that no such consensus is to be expected; that relying too strongly on it as a regulative public idea in a pluralistic society is likely to breed a mixture of in-group righteous indignation and out-group resentment and alienation; and that in its absence societies require open-mindedness, tolerance, and willingness to compromise, even as majorities eventually decide. Moreover, Pettit's habitual norm control and shaming is unlikely to do the trick of enforcing the shared recognition of *highly complex* legal constructs of non-domination, with the various types of group rights and exemptions which Pettit envisages.⁴⁶ Complex societies which recognise increasingly diversified forms of social need require increasing levels of reflection and *norm-distancing*. Norm control is about determining what 'people like us' will do or like in a given situation. All societies require such control, and republicans like Machiavelli and the British Commonwealth writers stress it. However, as Pettit himself notes, citing Skinner,⁴⁷ republicans already in the Renaissance lauded the ideal of impartiality. Jefferson's conception of public debate and Tocqueville's obsession with pluralism, individuality, the supreme danger of conformism, and the despotism of public opinion also need to be noted.⁴⁸

45. For instance, he must assume "that domination is a salient evil, and that removing it or reducing it is a more or less unambiguous enterprise", and believe it to be easy "to show how institutions can be designed ... so that people's enjoyment of non-domination is more or less smoothly maximized" (Pettit 1997:92,103).

46. E.g., Pettit (1997:130,135-47).

47. "Our watchword ought to be *audi alteram partem*, always listen to the other side", and "[t]he appropriate model will always be that of the dialogue, the appropriate stance a willingness to negotiate over rival intuitions concerning the applicability of evaluative terms. We strive to reach understanding and resolve disputes in a conversational way" (Skinner, cited from Pettit 1997:189).

48. May we detect, in these Tocquevillean themes, a reason why Pettit's "more modern republican tradition" only "perhaps" includes the former (Pettit 1997:19)?

Although Pettit invokes Sunstein and Habermas in the isolated context of constitutional contestation and debate, he makes no attempt at all at discussing the relationship and obvious tension between social space as norm-control and norm-enforcement and on the other hand social space as reflection and impartiality, let alone the difference between the types of institutions that might reinforce one or the other.⁴⁹ Under the complacent regime of the intangible hand, and in the conspicuous absence of any mentioning of the multiple social, cultural, and ideological forms of domination of which volumes of contemporary social theory speak,⁵⁰ Pettit's gestures in the direction of multiculturalism and politics of difference seem postulated.⁵¹ In my view, as developed in the next chapter, the republican tradition, *taken as a whole*, is better characterised by its ability to theorise both the ambiguity of the former conception of social space, the necessity of *both*, and the questions of how they are generated and given their proper form.⁵²

3.3. The Substance of Resilience

The last aspect of the republican resilience of liberty, as I read Pettit's position, concerns the actual, substantial legal content of *libertas*. According to Pettit, resilience does not just mean the security and predictability of *any* equal civic status; the sheltering walls of whatever laws a person may find himself obeying. Indeed, Pettit is in accordance with the classical tradition in the sense that areas of non-domination must be relevant and valuable ones for citizens' lives, and laws must be just. And we have noted that the republican tradition, generally speaking, had no problems in assuming, in a common sense or even implicit manner, that *libertas* must involve and further a set of very basic private immunities and freedoms of action, corresponding to things that every reasonable man would want for himself and his family, even as the *grandi*, as noted by Machiavelli, wanted more. Pettit's republicanism, however, goes a great deal further.

First of all, he claims that the constitutive idea of resilience or non-domination may be used as a master value to generate a fairly comprehensive conception of citizenship. Distinguishing between "intensity" and "extent" of non-domination, he defines the former in the following manner:

- Take a person's powers to include all those factors that are liable to affect political, legal, financial, and social clout. The intensity of

49. Pettit (1997:187f); cp. Rosenblum (1994a; 1994b).

50. E.g., Lukes (1974); Foucault (1984).

51. Consider Pettit's, to my mind unconvincing idea that the existence of civility as norm-compliance and social control is conducive to the inclusion of new groups. Pettit's move is to focus, not on the responsiveness of the majority society which does not recognize that something constitutes an offence against a vulnerable group, but on the need for in-group norm-compliance as a resource for "articulating shared grievances" (Pettit 1997:247).

someone's freedom as non-domination - if you like, *the level of their protection* - is not just a function of the powers that enable the person to resist or deter arbitrary interference by others. It is also a function of the powers at the disposal of those others⁵³

The extent of liberty as non-domination, by contrast, is about "the number of areas where they can enjoy such non-domination". Where republicanism implies a quest for strict equality of the powers of self-protection wherever they are first established (i.e., the sphere of civil rights), including minimization of steps towards relative increases of the 'powers of others', Pettit does not think it necessarily implies "that at any point where people differ in the range of choice available to them - at any point, in effect, where they differ in material resources - it is always better for overall non-domination that there should be equality".⁵⁴

Although Pettit speaks of different 'areas' of protection inside which a person's experience of non-domination may be more or less 'intense', he also seems to distinguish between more or less fundamental spheres, perhaps moving from legal and physical integrity of the person to 'range of choice' and material resources to effect them. However, according to Pettit, the normative vocabulary of non-domination, although it does not lend itself to strong egalitarianism, may be employed to support a wide range of policies instituting non-domination in "different spheres of *dominium*, different levels of resource and control, in everyday life", thus countering "the dangers that ordinary people face in their dealings with one another, individually and in the context of collective and corporate organization". Republicans, he claims "will be less sceptical of the possibility of state intervention and they will be more radical in their view of the social ills that the state ought to rectify". Moreover, the republican language of freedom as non-domination is capable of articulating "grievances which outrun the complaints of its founding communities". Thus, over and above the fairly traditional conception of legal, political and economical or social dimensions of citizenship, and a corresponding economic language of 'powers', Pettit goes as far as claiming (without elaborating), that liberty as non-domination "lends itself at every point of departure to further glosses and to further applications". Indeed the general idea that "a person not be exposed to the possibility of interference on an arbitrary basis", in a modern, pluralist society, according to Pettit, translates to the requirement that

The person must not be in a position where others can interfere in their [sic] lives in a manner that may be guided, for all the checks available, by *interests or ideas that they do not share at any level*. This ideal is dynamic, because there is never a final account of what someone's

52. Pettit (1993a:162,176).

53. Pettit (1997:113, *italics added*).

interests are or of whether certain forms of interference ... are guided by ideas that they share⁵⁵

Moreover, throughout his development of republican policies, Pettit claims theoretical ancestry in the republican *tradition*. This claim - which is a primary concern in our reconstructive context - needs to be heavily qualified. By and large, the attempt to represent republicanism as an ideal of comprehensive citizenship with economic welfare back-up only tabs the ideas of a part of the tradition (e.g., Rousseau). Pettit sees himself as modernising the republican intuition of the value of non-domination, security, or resilience, by taking into account modern dimensions of dominance which the classics did not envisage. This is misleading, though. The uncontested historical core of *libertas* was a rather limited idea of personal security and protection from the arbitrariness of the powerful (in particular the arbitrary taxation or confiscation of property). Pettit's notion that republican liberty is open to new interpretations and applications certainly captures an important republican insight (e.g., Paine's and Jefferson's 'the Earth belongs to the living' argument), but not in the sense that new republican generations will necessarily fill up new spaces of possible domination and personal insecurity. Jefferson's call for social subsistence provision (e.g., in his letters from France) was part of an early conception of natural rights which conceived of basic subsistence as a necessary ingredient of the moral agency (and duty to do good) of individuals, endowed with equal dignity by their creator. In the American writers, including Jefferson and Paine, it was combined with doctrines of invisible hand economics and freedom of contract (Pettit's 'liberalism'). Also, whatever Jefferson's ideas of a fair start for American freeholders, liberty also involved a stress on personal self-sufficiency, opportunity, and individual effort which was almost invariably conceptualised to require a strictly *limited* government.

The general point is that the particular flavour and thickness of republican resilient liberty, although never reduced to dogmatic libertarian non-interference, varied with the context. However, a republican case *was* made for a more derived, *instrumental* extension of citizenship in an egalitarian direction. This was the idea, found from Machiavelli to Sidney to Jefferson, that a certain degree of material security and economic independence (and/or possession of arms) was required in order to qualify as a good, reliable citizen.⁵⁶ This was *not*, as in Pettit, seen from the point of view of the individual, but from that of the republic and the need to mobilise enough civic virtue, whether as military or political clout, so that the citizen in question could be trusted to act *in the interest of the community*. In order to secure that independence from the threats and bribes of the powerful which was neces-

54. Pettit (1997:103,113, italics added).

55. Pettit (1997:130,133,146,148, italics added).

56. See also the discussion in the next chapter of *populism and liberalism*.

sary to have the common good in mind, some early republicans would in fact restrict citizenship to those who had the means to support or defend themselves, simply arguing that only these were capable of enjoying the fruits of liberty. More democratic and radical versions, by contrast, favoured various agrarian law schemes which could make *freemen* of individuals who were not so before.⁵⁷

Pettit, invoking Rawls' concept of "reflective equilibrium" claims that the concept of non-domination contains the raw material for an attractive political ideal which "has institutional implications that prove, at least on reflective consideration, to equilibrate with our firmer intuitions". I cannot deal adequately here with the case that Pettit makes for this assertion. However, despite being an interesting thought experiment with a distinct moral intuition, it seems less than solid. Pettit, for instance, talks out of existence the problem of indeterminant trade-offs between intensity and extent by claiming that non-domination policy efforts in different areas generally support each other, so that a state does not "have to worry about whether it may be better to concentrate on this or that area", as an effort in one place does not jeopardise the intensity of non-domination in another. Also, he recognises in principle a large degree of indeterminacy in the choice of a state "between being more restrictive on the extent of choice, thereby giving people a more intense degree of non-domination, and being less restrictive [i.e., more areas of free choice] and giving them a lower degree of non-domination". This type of indeterminacy is particularly salient in the choice of a state as to "how far it seeks to expand people's choices into new areas by removing physical and cultural obstacles". However, these seemingly massive problems are "effectively removed" once we add the "plausible assumption" of "a fairly accessible limit" inside "any area of activity" beyond which the efforts of the state to "protect the vulnerable from the dangerous" will render "the state itself ... a greater threat to freedom as non-domination than any threat it seeks to remove".⁵⁸

Once such 'assumptions' are made it is easier to understand that Pettit is ready to claim neutrality for a comprehensively worked up 'republican' constitutionalism;⁵⁹ how he can envisage a public consensus about relevant "interests and ideas" about what constitutes domination; and how such an evolving consensus could be fed by a mixture of deliberative "contestability" on behalf of new groups or new needs, and the recognition by previous majorities "that they each have a common interest in being protected from others in a constitutionally assured manner".⁶⁰ Even accepting, unhistorically, that a republican polity would necessarily carry Pettit's statist

57. Harrington, Sidney, Cato, Rousseau, Jefferson, and many Anti-Federalists were agrarian egalitarians. Amar (1990:37-40) comments on the two traditions. Neither the citizenship-property nexus, nor the distinction between egalitarian and exclusivist solutions is distinctly republican (King & Waldron 1988).

58. Pettit (1997:104-5,130).

59. Pettit (1997:97).

features, its particular constitutional creation and distribution of rights and privileges would still be quite indeterminate, once the bluntness of the language of non-domination is recognized. Who, after all, is to judge whether, and with what weight a claim merits as an instance of domination in need of repair? What degree and kind of equality constitutes adequate empowerment (resilience and ability to assert oneself) in the labour market, the family, or the political sphere? How to weigh the claims of groups with special needs? And exactly when do the legitimate powers of a state to interfere, redress, and empower, which Pettit's republicans so enthusiastically endorse, accumulate to the sort of potential for state domination, which the same republicans fear (and on which empirical grounds, if any, might "the vulnerable" be expected to evaluate *this* danger in the same way as the powerful)? Where, indeed, is the "built-in brake" which Pettit assumes a reflective equilibrium will discover? Moreover, it is simply not clear in what manner the question of how "the state can improve the defenses that it provides for its citizens against possibilities of interference" may be connected to such matters as "educational and medical provision" (your employer may well 'dominate' you, if you are ill, but even if he doesn't surely you require care?). Pettit's agenda of seeking means "whereby the value of citizenship can be increased" is close to welfare liberalism - occasionally, one feels that a language of fairness and entitlement would suit his intuitions better.⁶¹

Haakonssen, who grants the originality of Pettit's republicanism as a distinct normative search light, puts the problem succinctly:

The problem with this idea of republican negative freedom, resilient freedom, is much the same as the problems that have always been perceived in the liberal ideal of negative freedom. As long as the pursuits of individuals are likely to involve which aspects of the individual's independence warrant the special protection of the law. The liberal tradition has generally tried to formulate this by means of the concept of rights. The suggested republican idea of negative liberty shifts the problem but does not solve it. The problem is now, which forms of resilience should be backed or instituted by law⁶²

The upshot of Pettit's work, also reflected in his one-dimensional account of political space as social control, is an attempt to narrow the field of republican deliberation and the fields of value that a republican conception of politics can be understood to protect. Pettit's introduction of contestability and his appeals to the work of Cass Sunstein and Jürgen Habermas is timely. But it is patched onto a theory of politics which, despite its concern with non-domination, is decidedly unrepublican

60. Pettit (1997:63,68,183ff).

61. Pettit (1993a:185; 1997:105,150).

62. Haakonssen (1993:572).

in its very ambition to prejudge, theorise, and *construct* the shape of the republic in the abstract. Not only are the institutional embodiments of non-domination radically indeterminate. The very ideal hardly captures more than a part of the normative fabric of modern societies. Pettit's orchestration of non-domination seeks to monopolise a modern normative space occupied by the concerns of environmentalists, feminists, multiculturalists, socialists, and Rawlsians - leaving on the way side only a minority of die-hard free-marketeers and Benthamite liberals of seriously bad faith.⁶³ Of course, the procedure makes nonsense of actual 'reasonable pluralism' in advanced industrial societies in a manner that contemporary political liberalism cannot after all be accused of.

To my mind, the value of Pettit's conception of resilient liberty lies in its ability to conceptualise a political value. First of all, he develops an important distinction between 'freedom' as a generic agency concept and 'Freedom' as a political value ideal, in the manner discussed above. Secondly, once we grant that virtually all liberal doctrines must support a *resilient*, law-centred liberty, even when such liberty is only based on very minimal, libertarian rights schemes, we may appreciate an intuitively clear difference between political values, where only one emphasises resilience in the *broader* sense of material and social back-up for free agency. Pettit's work helps us concentrate on a difference on the level of *substantial*, richly textured, human values.⁶⁴ Welfare liberalism of the Rawlsian type enriches basic resilient liberty with the normative content of something like the equal and mutually guaranteed material powers to pursue one's projects of the good life, (almost) whatever they be. Right-liberal and libertarian doctrines enrich basic resilient liberty with such contents as the opportunity to take risks, to compete and measure oneself against others, to rely on one's own efforts, to 'deserve' the material and psychological fruits of such contingent efforts, and to be existentially responsible, autonomous, or self-relying by acting on the world and taking the consequences.

Such are some of the rich flavours and more or less independent subtexts to liberty in its generic sense of resilient citizenship status under law. They are also, in a manner that Pettit's project of republican reconstruction fails to acknowledge, an integrated part of the contestations of *libertas*. It is historically inaccurate to claim that republican resilient liberty was necessarily resilient in the specific sense of what Pettit proposes. The very idea of presenting a comprehensive scheme of values and institutions as 'Republicanism' - rather than using one's republican understanding of politics to present a theory of politics - is a serious misreading of the tradition. As I argue in the next chapter, this would blur the distinction between republicanism as a decidedly unfoundationalist discourse of compromise, pluralism, and political contingency, and various types of liberal rationalism.

63. Pettit (1997:81,132).

64. Berlin (1990).

3.4. From Resilience to Fragility

Each of the criticisms noted above point to one last troubling aspect of Pettit's work. In contrast to Skinner and Viroli, let alone Pocock, Pettit does not view political participation as a defining feature of the tradition. In *Republicanism*, where the place accorded to participation is slightly bigger, he rightly notes that "participation may be essential to the republic, but that is because it is necessary for promoting the enjoyment of freedom as non-domination, not because of its independent attractions". However, he fails to recognise the way that 'participation' *was* a part of the republican idea of liberty and to see the manners in which freedom was promoted by active citizenship.⁶⁵

In wanting to disassociate himself from all 'positive' conceptions of liberty, which are almost always also "concerns with democratic membership and participation", Pettit fails to see what Viroli and Skinner have stressed, and what I develop in this thesis, i.e., the existence of a conception of liberty which was *both* essentially law-centred *and* defined by the instrumental importance that it placed on self-government and specific modalities of civic virtue. Pettit cites a passage from Machiavelli about the possibility of enjoying civil liberty in a monarchy, notes that Harrington saw "people's liberty as consisting in something distinct from participation in government", and stresses the obvious distrust of the common multitude of the *popolo* in early and not so early republicanism. Also, according to Pettit, "[d]emocratic control is certainly important in the tradition, but its importance [does not come] from any *definitional* connection with liberty". The truth in Pettit's position is that republicanism cannot be equated, for obvious historical reasons, with democratic sovereignty or collective self-legislation, although this has been done by modern commentators. But in order to rescue republican liberty from a neo-Rousseauan embrace, Pettit throws the baby out with the bathwater. He fails to see the dual nature of *libertas*, which Wirszubski, who is cited, has highlighted in the case of Rome, and which our republican history encountered as early as classical Greece. Republican civic activity does not necessarily equate full-scale Rousseauan populism, it only has it as one of its later forms. Yet, in Greece and Rome, even in the conservative Cicero, *libertas* as a concept contained both the 'negative' aspect of security under a regime of laws and the 'positive aspect of constitution-protecting self-government, where the 'self' bore some relation to the citizens of a republic, as distinct from foreign rulers or an unaccountable home grown despot, and to activities which it was the duty of these citizens to perform. Typically, this did not entail 'rule by the people' (a dangerous and disruptive prospect in the opinion of most classical writers), but more often things as a popular *element* in the government and legislation, political discussion and scrutiny, performance of

65. Pettit (1997:8).

administrative and judicial duties, and above all the willingness to fight bravely in wars.⁶⁶

It is useful at this point to place Pettit's views in perspective in the context of a different author who, incidentally, is summarily dismissed by Pettit. Bracketing her political existentialism and Nietzschean conception of action, Hannah Arendt's ideas may be used to highlight the shortcomings of the latter, in particular his lack of concern for civic activity, in a fashion that foreshadows our republican reconstruction in the following chapter.⁶⁷ First, in a manner which is strangely absent in Pettit's rational and constructivist approach, Arendt was concerned with revolutionary founding, popular resistance, and collective, even rebellious civic *action* in the defence of what she called a safe 'place in the world' - not just against visible tyrannical majorities, but also very much against the soft Tocquevillean despotism of a bureaucratic state and that 'rule of nobody' of which one is occasionally reminded, when contemplating Pettit's conception of impersonal mechanisms of control.⁶⁸ Secondly, like Tocqueville, Arendt stressed the danger of conformity, of *exclusive* political reliance on 'public opinion', and indeed of the danger of that suffocating mass-society where, in the company of others, we recognise only the mirror images of our unstable 'self', and not the constitutive public dialectic of individual 'natality' and political 'plurality' which is a precondition of freedom - significantly, such freedom, in Arendt's 'Dark Times', was not *only* an existential value in itself. In particular, where most of Pettit's 'civility' is created by the institutional mechanisms of which he constantly speaks, and is anyway a fairly static form of generated social visibility, Arendt famously conceptualised a political space of *perspectives*, a fragile space which was kept in existence by political participation, and which disappeared as soon as citizens left the public and stopped talking in a political manner. Thirdly, her ideas of foundation, promise, and political judgment, as applied to her reading of American political history, suggested a form of ongoing, contingent, and activity-requiring constitutionalism, whose flavour of compromise and reconciliation of plural perspectives I do not find in Pettit. Finally, Arendt's work is perhaps the most suggestive modern account of that political pathos or romance, which *does* exist in the republican language of politics. Participation and civic virtue are instruments to secure common liberty, but the engagement with one's role as citizen may after all promise additional rewards. Pettit's calculating and rationalist language misses the importance - also the *instrumental*, motivating and integrating importance - of rhetoric, narrative, and identification as both the outcome and the fuel of civic activity.⁶⁹

66. Pettit (1997:27-30, italics added); Wirszubski (1950).

67. Pettit (1997:8). See also Fraser (1997).

68. See Isaac (1993).

69. Arendt (1958a; 1958b; 1961; 1971; 1973; 1982). The republican Arendt is discussed in Canovan (1992), Lloyd (1995), and Mouritsen (1992; forthcoming).

The idea of liberty as resilient and secure is important, and certainly important to clarify, not least because Pettit may be right that the relation between liberty and law is poorly understood. But it does not define the difference that we want to stress between a republican and a liberal conception of liberty. Many of Pettit's suggestions and analyses are not very controversial for liberals. And some that are, should worry republicans too. It is not the notion that liberty is preferable when it is (felt to be) secure that divides the field. It is rather the evaluation of what political measures this state of affairs requires. In particular it is the question of what forms of civic virtue are needed, how demanding may be the obligation of citizens, and, related to this, what motivational difficulties must be countered to make such virtue come forth. Pettit fails to conceptualise the most central guiding idea of republican thought. This is not only that liberty is most valuable when experienced as secure and robust, but that such an ambition must be reconciled with the fact that liberty, like the institutions which support it, is *nevertheless fragile*, that it requires intervention and care, that an important part of this intervention - be it in war or in deliberation - consist in the activity of citizens, and that this places obligations on these citizens accordingly.

I shall argue that a more suitable dividing and defining metaphor for the republican conception of a cooperative venture in realising liberty, and for doing so in a manner which does not itself jeopardise its object, is indeed the concept of *fragility*. The security of liberty is contingent, potentially threatened, and non-obvious in its existence and content, in a manner that is not illuminated in Pettit's vision of the city. The emphases on legality, conscious design of institutions, and systems of incentive, are certainly much needed antidotes to the depiction of republicanism as a doctrine of spontaneously self-organising popular rule. There is much merit, as far as it goes, in the emphasis on rationality and interest, in contrast to the language we have come across of unworldly moral sacrifice. And also the emphasis on the role of social norms, rather than individual conscience, policing citizens to meet obligations is clearly important, as much too often republicanism is misrepresented as highly optimistic and generous in its assumptions about human nature.

Still, Pettit's solutions bypass the most important problems. Indeed, in certain respects, they become part of the problem. The idea that civic virtue can be reduced to a question of unequivocal social control of one's fellow citizens, and, through voting, screening, and sanctioning, of one's politicians, is much too simple, as is the tendency to regard *corruzione* in the republic as *only* consisting in attempts to free-ride on the common good. A system of self-interest, mixed government or, as in the large democratic republic, a balanced government with separation of powers, can never be regarded as self-sustaining or self-perpetuating, as even the confident federal political scientists of the American Constitution knew.⁷⁰

70. Harrington is the most obvious republican ancestor to Pettit. But we have

Pettit's analysis and de-emphasis of civic virtue overlooks a very fundamental republican intuition. The point, made in a number of different ways in the tradition, is that civic virtue is *both* deeply problematical *and* indispensable. Institutions, good laws, civil religion, respected *moers* or other things may be essential to liberty, including the generation of the simple but crucial virtue of honouring obligations and respecting rights. But their nature and good quality is exactly what cannot be taken for granted. Different voices in the tradition have different answers to the type and locus of political intervention that is required to secure the republican artifice. But the common denominator is that such intervention is possible and necessary, and that a significant part of it, by the nature of things, must consist of the actions of the many, of the mass of ordinary citizens. On the other hand, an important part of the republican tradition deals with civic virtue as *itself* fragile. Securing the proper guidance of civic activity, preventing its goals - also the goal of common liberty - from being displaced, and even generating the necessary motivation in the first place, is far from easy. It is suggested that the *quality* of the citizenry, or the dispositions, direction and strength of motivations in a political culture, is a complicated and contingent outcome of a dialectical relationships between institutions and civic virtue, political culture and civic virtue, and laws and civic virtue. Laws, institutions, and culture must be imbued with the right spirit, but in order to be protected they must also have a life in the hearts and heads of citizens. These dialectical relations are visible in all of the four aspects of the republican argument about the fragility of liberty, which we may now proceed to develop.

seen that Harrington in many ways departed from the republicans that came before and after him.

CHAPTER 8:
THE FRAGILITY OF LIBERTY:
FOUR DIMENSIONS OF A REPUBLICAN ARGUMENT

1. Introduction

What follows is an analytical summary of different modalities of the republican argument about political activity as necessary to secure common liberty. The distinctions that I make are indeed analytical, in the sense that actual political activities may partake in more than one of them. Also, each dimension itself has different aspects to it, different republican authors have stressed different points or provided different, at times conflicting answers. In each of the four sections, I also briefly point out in which ways particular versions of republican argument have been challenges to various historical liberalisms. As I do so, I occasionally take the liberty of enlisting, in *ad hoc* fashion and as theoretical adversaries as well as supporters, a number of contemporary writers who see themselves as reinventors of republican themes.

2. The Artifice

The first dimension is about the contingent character of what we may generally call the *artifice* of the republic and the effectively recognised legal status of citizens, and about the corresponding need for civic virtue to institute and protect this artifice. As stressed by Phillip Pettit, the republican conception of liberty is law-centred and state-centred. The citizen status of individuals enjoying common liberty is made up by a set of laws, constitutional and subconstitutional, and by a set of enforcing and protecting institutions. The state, with its various agencies and political and administrative powers and officers, all working according to the rule of law, and the principle of equality under law, makes up a 'liberty-enabling' structure. Whether *libertas* is relatively 'thin', as in the American conception of limited government, or relatively 'thick', as in Rousseau's conception, the point is the same. Moreover, the state facilitates common liberty not only directly but also indirectly, in manners which vary in the tradition, by taking upon it the task of educating or inducing citizens in whatever way that is necessary to secure the requisite public spirit.

Contra Pettit, the republican emphasis on legal and political institutions is found in a very great deal of liberal thought too. It is really challenged only by some right-liberal, particularly libertarian theories of 'possessive individualism' and a minimal night watchman state, which replace the importance of state and institutions with benevolent invisible hand anarchism.¹ What may be controversial, par-

1. Rumours about the long history of anti-statist liberalism are vastly exaggerated. Barber's eloquent development of liberal anarchism (1984:6-11,37-38) has

ticularly to contemporary liberal writers, is the republican conception of non-neutrality. We return to this aspect in the Conclusion.

What is constitutive of the most basic republican fragility of liberty is the fact that the state and its legal institutions cannot be taken for granted. They have to be created and consolidated in the first place. Yet, laws, officials, and offices which used to work benignly in the past may at any time become corrupted. Hence also the constitutive dialectic in republican thought between republican liberty *by* the state and *from* the state. Machiavelli, in the turmoil of warring city states and principalities classically stressed both, liberation as well as liberty, but the dualism in the view of the state is equally evident in Montesquieu, American republicanism, and Tocqueville.

Republican history can be reconstructed as a set of more and more sophisticated defences of the idea that the political structures that secure and realise common liberty do so only, certainly in the long run, if active citizens are around to create and protect these structures; *and*, in turn, around to protect themselves and other citizens *from* them, as well as from the individuals who use them for their private ends.

Most basically, republicanism always contains a doctrine of revolutionary founding. At its most general, this can be expressed as the radical awareness of the unnatural, artificial character of the republic and its institutions. Hannah Arendt once noted that republican theorists and political actors themselves resisted the full implications of the new republic as a *Novus Ordo Saeculorum*.² Still, the stress on the contingency of the republic in space and time as a product of human action is characteristic of the tradition, as is the radical nature of the depiction of all non-political states. Liberty has beginnings and ends and always need new beginnings somewhere. Despotism, fear, slavery, or license is typically seen as the normal state of affairs, and liberty, law, and citizenship as the exception, - most dramatically, again, in Arendt's account of human freedom as flickering lights in the long dark times of totalitarianism and mass society, and citizenship as a 'place in the world' the precariousness of which became evident to the world in the aftermath of World War II.³

The republican emphasis on the artificiality of constitutionalism and citizenship carried important consequences for views and ideals of active citizenship. It is simply built into the republican idea of citizenship from the beginning that it is

Robert Nozick as its only ideal type. If Locke's labour theory of property and his theory of money (viewed in isolation) are central (Locke, *Two Treatises*, II,25-51) central, the theoretical articulation of ideological 'Manchester liberalism' is otherwise rather scarce. Also Adam Smith, for all his fame in this connection, was rather 'statist'.

2. Arendt (1978:Vol.II,195-217).

3. Arendt (1958b:269-302; 1973).

necessary and hence rational for individuals to secure the conditions of their own status as citizens.

First, citizens have an interest in creating and maintaining political order as such, as this is the *sine qua non* of liberty. In the republican world, Kantian uncomfortableness with revolution and war⁴ is replaced with the insistence on the occasional need to secure the very existence of states, instituting *libertas* in the first place, and with the general acknowledgement that political justice is the result of popular will to 'begin', and as such presupposes independent sources of civic virtue. The ultimate contingency of such self-propelling motivation is obscured in the liberal idea of a sense of justice and civic identification evolving as a long-term result of what Rawls calls a well-ordered and just society⁵ - the point being that such a society has to somehow get off the ground in the first place. Here, the work of Sidney, Jefferson and Paine stand as important democratic-collectivist exceptions to a more elitist tendency in republican discourse, from Cicero to Machiavelli and Rousseau, to conceptualise the beginning as the work of a single great lawgiver or good prince.

Secondly, corresponding to the republican emphasis on the numerous dangers of erosion and corruption of the state and its political and legal institutions, rational citizens ought to be on guard against the domination of such institutions by non-accountable groups with varying power bases and clienteles. Citizens of Machiavelli's Florence knew or ought to know that uncorrupted institutions and magistrates in the long run could only be secured through the exercise of civic virtue. Citizens must, for their own good, be willing to leave their private comforts to protect their republic from the insolence of those arrogant *signori* who wished to use it for their private ends. Exactly what this virtuous protection of the artifice required varied from armed popular resistance, to public scrutiny, questioning, and critical debate in the public square, to Jeffersonian ward democracy, to participation in local civic associations. Even the occasional local revolt, Jefferson and Paine believed, helped to keep the republic in shape.

The republican tradition also exhibits a long series of internal differences between more populist or democratic and more elitist or aristocratic evaluations of who should participate how much, and how much popular vigilance could be realistically or reasonably expected. Differences concerned the diagnosis of dangers to the republic, and varying sensitivities to these dangers (including the danger associated with *too much* popular activity) were no doubt to some degree relative to the social groups and interests that were prominent in the discourse. Aristotle and Cicero each had their democratic critics. Guicciardini, the aristocrat, disagreed

4. Kant's famous ambiguity between rejection in the name of *Recht* and "a sympathy which borders almost on enthusiasm" should be noted though (Kant, *The Contest of Faculties*, section 6, *Political Writings* (p.182)).

with Machiavelli. Rousseau's egalitarian sentiments placed him in opposition to Montesquieu, just as Harrington distrusted the people more than Sidney. Jefferson struck a decidedly more democratic note than Madison and some conservative Anti-Federalists. Finally, Tocqueville was highly sensitive to the dangers of modern mass participation and aware of the need to provide the institutional and cultural means to secure its beneficial form.

The challenge to these core republican ideas took several forms. At the most general level, republican political cosmology became threatened by the rise of progress theory. In Chapter 4, we noted a range of different attempts by European Enlightenment philosophers to conceptualise political institutions, legal regimes, and even the behaviour of the elite and the masses as outcomes of universal movements of progress leading human societies, more or less slowly but usually inevitably, towards a more civilised and peaceful state. Some progress histories were largely materialist, for instance by viewing property, law, and the state as the last stage of a natural process driven, say, by the transformation of modes of subsistence. Others, more idealistic, were based on appeals to the human capacity to combat prejudice, a capacity which was somehow woven into a wider fabric of a well-ordered, reasonable universe and which would eventually produce more civilised constitutions and political forms. Kant connected realist reason of state and knowledge of the weakness of the call of duty to a sort of bio-evolutionary theodice. And eventually, the dynamic of reason was taken out of the heads of rational or rationally egoistic citizens as well as progressive utilitarian legislators and placed in history itself, as in Hegel. However, we also saw, for instance in Ferguson, that progress theory could be combined with a republican analysis of corruption.

We noted that the contrast between natural rights discourse and republicanism has been overdrawn. Still, the Enlightenment turn towards viewing individuals as naturally equal before their God or in their possession of reason certainly contributed to the rise of progress theory and the eventual forgetfulness of historical contingency. In particular, although republican versions of the figure continued to exist, the advent of contract theory and state of nature discourse sowed an anti-republican, libertarian seed. Eventually, politics could become conceptualised primarily in terms of moral and legal relations between the state and the self-owning individual who consented to give up part of a natural status. The state and law was no longer necessarily constitutive of civilised life as such, but could be viewed primarily as products of convenience.

If progress and natural rights theory came to constitute an increasingly infertile discursive environment for republican thought, also more particular theoretical departures came to divide the field. Important junctures came when a political theory developed which convinced itself that institutional mechanisms, divisions of pow-

5. On the republican-liberal dispute on this dynamism see below.

ers, a pluralist civil society of competing interest groups, or the cooling economic rationality of the market could *replace* the political activity of a virtuous citizenry, however the latter was defined. We saw such developments above all in the work of Hume, but also as new elements *inside* an American discourse which also contained important republican elements, e.g., that of Madison. Many writers of the Enlightenment, even while recognising in principle that liberty was a fragile temporal creation, started to de-emphasise the role of civic virtue. Patriotic dispositions became depicted as the unruly, irrational, and disruptive passions of the mob which could be directed towards sinister purposes by competing elites. Civil government was an outcome of a progressive, rational modernisation of European monarchies, where the more enlightened members of the learned and wealthy classes had more of a role to play than the people. Or, in more sceptical thinkers, political institutions and procedures were seen as better repositories of political rationality than individual men.

The discourse of commercial civil society as a cooling and civilising agent, which rendered political institutions more stable and secure, is treated below as an instance of the liberal challenge to republican conceptions of political 'space'. As regards the second great anti-republican move, the turn to institutional checks and mechanisms, it is a mistake to believe that republican discourse completely disregarded constitutionalism or institutions in favour of exclusive reliance on popular participation. The difference lay in conceptualisations of checks on political power. Republicans from Aristotle to Machiavelli to Sidney had recognised the importance of rotation in office and other means of institutional architecture that helped to keep corruption at bay. But they also stressed political participation, including internal participation in forms of counterposed social forces in a *governo misto*. The guardians had to be guarded by the people - and the people in turn had to be kept virtuous. By contrast, the new conceptions of division of power as *complex*, interlocking and countervailing government aimed at a more thorough instrumentalisation of the beastly inclinations of citizens. Unlike Hume and Hamilton, Madison did not take the last step himself, but continued to believe that even the best political architecture required some virtue. However, in terms of theoretical impact, his work did herald a new 'political science' of constitutional legislation which assumed the propensities of men to be constant, universal, and calculably egoistic. Their arguments, in turn, were implicitly dismissed by Tocqueville who saw in them an American failure to understand the real preconditions of the country's stable democracy.

The final challenge to the republican argument, related to the above, was the liberal theory of democratic pluralism which depicted politics as a market place for the competition of a large number of groups with each their constituencies whose interests they seek to promote. We saw that the first version of this idea was Madison's formulation of the enlarged sphere argument. A later, cruder but highly influ-

ential variant, may be found in the utilitarian conception of 'protective' democracy, where competing groups controlling their political representatives by their vote ensure a 'rational' aggregation of preferences, and at the same time facilitate the automatic voicing of all relevant interests, securing that no one sinister interest will monopolise institutions.⁶

This conception, it is worth noting, is different from Machiavelli's or Montesquieu's favourable view of such social conflict which made magistrates unable to rely on a single stable group, and which still connected to a broader common interest translatable to rational patriotism, particularly in times of danger. More generally, Machiavelli, Rousseau, Sidney, Jefferson, and Tocqueville all emphasised the need for individuals to protect their rights by banding together - in self-government, in vigilant public criticism and scrutiny, in protest, in revolt - with all those who shared the essentially *common interest* of having an uncorrupted and just political order. This is quite different from the idea of interest groups protecting their interest against the state, securing their representation in the state, or effecting the peaceful arbitration of diverse interests through the state.

The republican tradition contained several responses to interest-group based liberal democracy. One was Tocqueville's fear that a politics based on the egalitarian jealousy of interest protection would lead to a type of mass majoritarianism which might eventually lead to the sacrifice of individual liberty. Participation - of the right kind - was exactly necessary to prevent the tyranny of a state addressing itself to citizens reduced to hedonistic consumers. In a rather different, populist republican argument, also seen in Cato and many Anti-Federalists, we find the argument about the need to organise and mobilise the people against the sinister economic interests of a few (speculators), by contrast to which the diversity of the people's circumstances may be transcended to yield a general, popular interest. In this connection, Robert Dahl, in his work on economic democracy, has recently referred back to the Jacksonian reaction, already visible in Jefferson and even in Madison, against the threat of a political system dominated by powerful corporate interests.⁷

6. James Mill, *Essay on Government* is the classical text. Ryan (1989) has elucidated how Mill the elder was a precursor of Schumpeter (although the latter's political market place was assumed to be oligopolistic, rather than perfectly competitive, as in Mill) and Downs. It is worth noting that not all 'pluralist' political science was equally crude. Truman, who cited Bentley, Lazarsfeld, and Lasswell in support, was 'Madisonian' in the sense of assuming the background condition of a liberal democratic consensus on, and allegiance to, the rules of the game (Truman 1951:512-16). And if early American political science ideas of a basic 'civicness' often reflected the complacent functionalist hegemony of the period, much of the work of Dahl and Lindblom had its Jeffersonian moments. See for instance Lindblom (1988:introduction) and Dahl (1963:91-92). For Dahl's latest, distinctly republican formulations, see Dahl (1989).

7. E.g., Dahl (1982).

In the majority of republican writings, particularly older ones, it was assumed that *libertas* is an unambiguously *common* interest, and that protecting it corresponds to solving a reasonably simple collective action problem. However, the tradition also at times reached a more demanding normative territory where active citizenship was particularly needed in order to secure the equal status of *some* groups of individuals in the republic. This was most clearly in the concern with economic equalisation, as stressed by Rousseau in particular, but also by Jefferson and many Anti-Federalists. To these authors, the struggle to avoid the degradations of material misery of the least of the members of the republic was a separate moral concern. Even so, in its most original form, the republican argument was constitutively defined by the intuition that egalitarian citizenship, perhaps including certain schemes of redistribution, amounted to a straight forwardly rational, mutualist measure, even as it might involve sacrifice on behalf of some, and even as the existence of different social classes was acknowledged. Failure to exhibit civic virtue, accordingly, was primarily conceptualised as failure to understand one's own best (long term) interests, i.e., as 'rightly understood', or as free-riding on the labours of others.

3. Civic Space

A second fragility of liberty can be summarised as a question of civic or public space. This space refers, in a very broad sense, to those inter-personal relations, pressures, generated dispositions, and expectations which are necessary to make *libertas* more than a merely legal reality. In the most general way, we may say that republicanism contains a number of arguments about how beneficial dispositions in citizens to practice virtuous activities - both in their private and their public dealings and activities - are a result of a public space or public sphere. And this sphere is in turn generated by the public part of the virtues which it helps generating. I have in mind a complex set of ideas. Before looking at them, consider again the republican conception of *libertas* which was analysed in the previous chapter:

As noted, republican liberty was not conceptualised as the (contingent) ability to do what one actually can in some area. Also, it was not *only* the legally defined right to do or have something, nor even the actually forthcoming material honouring of such a right by the state. These legal and material/institutional aspects of what Pettit calls resilience were of course important. But republican liberty was also, as paradigmatically visible in Montesquieu and as taken up by many American writers, a *social* phenomenon. It was so in the sense, first, of the actual reality of having one's legal rights respected *by others*, i.e., fellow citizens. Secondly, it was so by virtue of the importance of inhabiting a social space where one could safely expect such respect of one's rights to be forthcoming from the state as well as from fellow citizens.

Fragility of liberty as fragility of civic space is about this social aspect of liberty. This is so, both as regards the actual enjoyment of one's rights as spheres of unviolated private existence respected by others, and as regards the subjective safe expectation of such a state of affairs also in the future. Both are experienced, by citizens wishing to enjoy this liberty, as questions of the *protection* yielded by social norms and social visibility, the latter, subjective aspect directly so. From the standpoint of citizens respecting the liberty of others, the space of normative expectation and public visibility is experienced as an ongoing *exposure* to potential censure, and as a system of incentive structures that disposes the individual towards beneficial forms of action.

A note on *private* virtue in republican thought is in order. Thus, virtue in the republican tradition by no means exclusively referred to strictly political virtues, such as participation in self-government or fighting in wars. Very often - in different ways in for instance Cicero, Sidney, Rousseau, or Tocqueville - it was connected to the broad citizenship ideal of respecting other people's rights and living with one's fellows in justice, according to the spirit of the law, in moderation, self-restraint, and impartiality. To associate republicanism exclusively with martial and self-sacrificing Spartanism, to repeat, is to accept a reading of the tradition which became fashionable in the early years of commercial capitalism, and which associated it with an unruly passion for honour and public display and a positively dangerous disregard for one's own private existence, as well as that of others.⁸

These 'private' civic virtues may also be found in liberalism. The good liberal citizen, of course, came in many forms,⁹ but even the most minimal conception involved a duty to respect the rights of others - however minimal these rights, and whatever one's motives for doing so. Through history, a number of liberal accounts of moral psychology can be traced, each of which presuppose more or less elaborate theories of civil society. The historical contrasts are rather less than clear-cut. Yet, it is still useful to recall a set of liberal and proto-liberal ideas, coming out of the Enlightenment, most of which we have discussed, and all of which could be employed to challenge specific republican assumptions about the fragility of good 'private' as well as 'public' citizenship. Loosely, we may speak, first, of a set of Kantian-Hegelian ideas which emphasised individual development to moral consciousness and internalisation of impartiality and sense of justice in various types of institutions, from the family to various intermediary 'corporations'. A Hobbesian and Benthamite line of argument emphasised forms of self-interest in the fear of coercive law and sanction. A third family of ideas, which may be associated with writers of the Scottish Enlightenment, but also with Montesquieu and American writers who took up the theme of the morally beneficial effects of commerce, stressed the

8. Hirschman (1977).

9. As discussed in Chapter 5. See also Macedo (1990).

cooling and disciplining effects of exposure to the market which was seen to dispose individuals towards the habitual honouring of contract. A fourth set of ideas, again with writers of the Scottish Enlightenment as prominent figures, in different ways presuppose a natural propensity towards an inherent moral sense or 'sympathy', which might under the right circumstances connect to more artificial 'manners' of civility. Most progressive Enlightenment thought, finally, adopted versions - more or less optimistic and ambitious - of belief in human moral *perfectibility*, very often drawing on Lockean sensationist psychology and ideas of a *tabula rasa* for educators to place impressions upon.

Many of these ideas overlap with particular articulations of republican discourse which survived into the Enlightenment. However, the main stream of republicanism was still characterised by its intuition that even the propensity to *private* virtue was significantly unnatural, not in any way to be taken for granted or treated as a constant, calculable, ahistorical, psychological disposition. Indeed, to republican writers such dispositions were not so much the result of the building of 'good character', or enlightened moral stature, but more like an unstable and fragile outcome to be enjoyed where citizens experienced certain constraints and conditions. Also importantly, the *vices* acknowledged by republicanism, contrary to the received image of republicanism's rosy optimism, included not only predictable egoism, but also thirst for power and glory, and, more common among the many, apathy, irrationality, forgetfulness, and mass behaviour. Securing private virtues such as respect for justice and the practice of toleration and keeping vice at bay, was very much a continuous result of the generation of public space and public activity.¹⁰

Moreover, not only are private virtues publicly generated, so are public virtues. This last point may be noted as a constitutively 'circular' republican argument. Civic virtue, once operative, starts a 'virtuous circle' by generating the conditions needed for its further creation. To the propensity to respect and honour justice in one's immediate private dealings corresponds the public virtue of positively furthering justice. And to both modalities of good citizenship corresponds some notion of a civic space, constituted by the actions, valuations, and visible presence of other citizens, who thus, in different ways, make it their *public* business to remind each other what their liberty consists of, why each component is important, and in particular see to it that common liberty is respected as an ongoing concern. Importantly different aspects of republican political space may be discerned:

Let us return for a moment to Phillip Pettit's account. Although he has valuably stressed the social 'resilience' of liberty, we shall see that there is more to it than he thinks.

10. But not exclusively so. I do not discuss, in this thesis, the important role of education in republican thought.

First, Pettit's conceptualisation of social visibility usefully captures the Spartan-Rousseauian vision of *social control* through potential exposure to public shame, as well as its opposite, public praise and esteem. Here, we respect other peoples' liberty out of an interest in our own reputation, which is important to us because we live in societies. Liberty, in this sense of political - or social - space is maximised when a society commits itself to policing those rules which everybody recognise as valid and rational, even when they would privately be tempted to cheat. Social control is clearly important in republican thought. Even that large part of republican thought (e.g., Ferguson, Jefferson, Federalists and Anti-Federalists, and Toqueville) which entertained early ideas of reflective individualism also generally relied on the motivational mechanism of *being seen by others*. At the most general level, this represented a motivational mechanism which tended to be crowded out, in particular, in liberal reliance on individual (Christian) consciousness on the one hand, and reliance on coercive law on the other.

While Pettit primarily discusses the role of specific ways of *institutionalising* shame, for instance by means of the legal system, historical republican discourse more often focused on exposure to 'being seen' and active shaming as features of public activity and a continuously generated public space. A person could suffer shame when there were virtuous, i.e., non-indifferent, citizens around to watch. The exposure to personal shame was more easily avoided by some people than others. Thus, it was an important civic activity to bring to attention those shady projects, in the corridors of power and privileged courtly access, which were so unambiguously sensitive to public light as to be defeated by exposure. Political activity could be the habit, not just of mutual policing in various settings of civil society, but also of vigilant exposure of the corruption of the powerful.

On a more positive note, again taking the idea in more participatory, activist directions than does Pettit, the republican tradition also prominently featured the complementary mechanism to shame, which was public esteem, honour, or recognition as the rewards of worthy actions, i.e., not so much the conventional virtues of the good private citizen, but more the public virtue of dangerous or demanding defence of common liberty. The thirst for public happiness, we noted, does not define the tradition. Even so, it remained an important motivational mechanism, for instance to Cicero, Machiavelli, Sidney, and Jefferson.

Secondly, a rather different idea, found in Machiavelli, Rousseau, Anti-Federalists, and particularly Tocqueville - mentioned by Pettit, but not developed - is the generation of social *trust*. Trust, here, meant the assurance that other people would act in certain ways in the near future, i.e., meet their obligations, respect one's rights, refrain from free-riding on common projects. Moreover, they would do so also in the *absence* of social control and public exposure. Such trust had to do with repeated interactions about projects of mutual concern through which indi-

viduals came to have expectations about the future actions of others.¹¹ To the American Founders, trust was a horizontal bond between citizens pledging in public space to 'stay together' for the sake of joint (revolutionary) action.

While liberal theory historically may be somewhat weak on the idea of social trust,¹² its absence is only constitutive of Hobbesianism. The difference is in the perception of the mechanisms that generate trust. A source of social trust in much liberal theory was the impersonal operation of the market, with the mutual long term interest in, and habituation towards, honouring of contract. By contrast, republican theory tended to conceptualise trust as created and enforced by forms of civic involvement where citizens demonstrated, through deeds involving risk or costs to themselves, their determination to undertake common projects and thus their trustworthiness.

Pettit's conception of republican civic space and civic virtue, while important and perceptively developed, is inadequate in a very important way. We noted above that the most basic normative vocabulary of the republican tradition treated *libertas* as an uncontroversial common good, and conceptualised failure of public virtue as failure of the enforcement mechanisms of straight-forward collective rationality. However, when we look at the entire tradition, such one-dimensional social normativity does not capture the full complexity of republican civic space. Thus, other conceptions went beyond conformity to norms and standards that were uncontroversially *recognised* as common obligations, and also beyond the generation of expectations of cooperative reciprocity. Very often failure to meet obligations was seen as a result of neither weakness of moral will, egoistic attempts to free-ride, nor disbelief that one would be treated justly in turn. Sometimes republican citizens were depicted as either forgetful or narrow-minded, in their failure to perceive and act upon what common liberty required.

Thus, a third way of conceptualising public space may be found from Machiavelli to Rousseau and Jefferson, but again also with Tocqueville as a main figure. The stress here is on the corruption of *forgetfulness*. This is the problem of citizens who much too easily forget their duties and obligations, as it were shamelessly, once they are left to themselves, and once the mutualist foundations of common liberty is allowed to loose its hold on the public imagination. In early, Calvinist natural law theory, we saw that virtue became conceptualised as a moral duty, op-

11. There is a degree of agreement, here, with some communitarian theory. Stripped of the vocabulary of community, togetherness, and belonging as abstract independent values, particularly second generation sociological communitarians (Selznick, Bellah, Etzioni) stress the important public good of trust. As also noted in an Italian context by Putnam (1993) citizens' enjoyment of welfare, prosperity, and security may be seen to depend in a number of fields on the generation of social capital, which in turn is an outcome of certain forms of civic involvement.

12. As distinct from the vertical relation of trust between rulers and ruled (Dunn 1990a).

erating from within. As liberal rights discourse became progressively detached from notions of such Christian duty, and linked to possessive individualism, private autonomy, and economic *laissez-faire*, Tocqueville, in particular, came to represent a modern republican criticism of what he saw as the capitalist ethos of rights-pride, the illusion of self-sufficiency, i.e., of not owing anything to anybody. One important point of Tocqueville's celebration of a diversified associational life was to secure that citizens were able to have continuously before them that the republic was a cooperative affair.

Fourthly, and more critically still, the type of virtue which was required in some situations could be seen as particularly unobvious and taxing for the individual citizen, because it demanded an unusual degree of impartiality and broadness of mind. Indeed, sometimes what was needed was exactly the opposite of conformity to established norms. Rather, it could be the ability to transcend the narrow view points of one's own group and its particular interests and needs. It is safe to say that a great deal of early republicanism had fairly crude conceptions of the common interest. We saw, well into the American debate, that 'the people' was very often seen as a homogeneous body. Indeed, traditional republican discourse was attacked, by men like Madison, exactly because of its inability to recognise a diversity of legitimate social, cultural, economic, and geographical interests - and not just natural estates - in modern civil society. Modern pluralism was conceptualised, by Madison, to require a modern form of moderation, a willingness to reflect upon, relativise, or transcend one's private particularity. Rousseau's position in this respect was modern in its sophisticated requirement that the republican artifice be so constructed - small scale, agrarian, artificial national customs - so as to avoid such pluralism, and render perceptions of the general will unambiguous.

Above all in Tocqueville (as famously re-developed by Hannah Arendt in the latter's analysis of modernity and the danger of 'the social'), but also, in various ways, in Machiavelli, Montesquieu, Ferguson, and Jefferson, we find a latent or explicit republican insight that liberty is not just *by* society, but also *from* society and its pressure to conform. While a division may be seen in the tradition on the relative importance of one idea or the other in any one author, republicanism often combines social control, shaming, and socialisation on one hand, and the demand for independence of individual judgement and the capacity to reason reflectively on the other. Civic space was not only *being seen by others*, but also the capacity to *see others*, in their diversity. If Rousseau was exemplary in eventually stressing the former at the expense of the latter, Jefferson and Tocqueville placed more emphasis on public reflection and independence.¹³

In its extremer forms, what Pettit calls the 'intangible hand' of the shaming mechanism has certainly taken highly illiberal social forms - as indeed they did in

13. See Barnard (1989).

Rousseau or Harrington, let alone in all of the historical city states where republicanism was practised. Indeed, the historical appeal of a great deal of liberalism has been its case for a moral individualism of independent judgement, private consciousness, hostility towards the pressure of (prejudiced) public opinion, and above all the readiness to live in peace and tolerance with people whose outlooks - in particular religious beliefs - are different from one's own.

In terms of the historical fault lines, the early liberal challenge consisted in reversing the terms of the problem. Hume, along with other Enlightenment writers in France and Scotland, who painted draconian view of the social forms of the ancients, saw the force of public opinion in large, uneducated collectives as the source of dangerous passion and fanaticism. Civility, politeness, and cool, detached behaviour found its fountain in new conceptions of civil society based on commerce, exchange, refined consumption, and the development of a sphere of intimacy; even as some continued to stress that childish vanity and materialism was a high (but necessary) price to pay.

The more political conceptions of civil society of Ferguson, Jefferson, and above all Tocqueville may be seen, in light of the above, as a conscious attempt at an *Aufhebung* of classical republican discourse and liberal thought. Here, the market and commerce, while valuable and useful, were still seen as potentially conducive to various forms of corruption, such as a dangerous new, social conformity, variety, and incapacity for independent judgement. And in particular, the capacity for distancing and tolerance of political adversity and social diversity became attached to other forms of interaction, including political debate and participation in local associational life. The civil in civil society came to stand for new versions of the republican virtues of involvement, now attached to new, plural conceptions of political space. Even the word 'commerce' was also capable of denoting new forms of public civility and 'friendship'.¹⁴

Tocqueville's move, which inspired later theorists of the public sphere like Arendt, may be seen as a new republican reconstruction of the master virtue of moderation. Tolerance as an ongoing concern, an impartial political culture, the existence of significant social diversity and perspectives (as opposed to the dreary and dangerous mass society of busy consumers, which Tocqueville feared), even the habit and capacity to reflect independently, all of these things could become seen as a result of involvement, of political, associational activity and a functioning public sphere.

The contrast to liberal thought here, consists in a different flavour of interpretation of the social and political causality of these achievements. By and large, liberal writers, critical of state sponsored religious intolerance, and sceptical of the public life of *les anciens*, saw the solutions in letting people be and in re-evaluating

14. Silver (1997).

private autonomy. The belief was widely shared that reflection and tolerance were the automatic outcomes of various forms of social and moral progress, or, as recently reconstructed by Nancy Rosenblum, of new conceptions of civil society, not only those based on commerce and market, but also what she calls *elective* civil society, made up of plural associations and social activities, and voluntary, 'shifting involvements' between them.¹⁵

If liberals since Locke stressed the values of reflection, tolerance, and impartiality, prominent writers like Kant, J.S. Mill, and T.H. Green also developed conceptions of a liberal *Öffentlichkeit* of autonomous citizens, controlling and guiding elected representatives, and effecting their own growth to maturity and moral education in the process.¹⁶ This importantly public-oriented strand of modern liberalism should warn us, of course, not to overdo contrasts. Still, these late liberal adoptions of republican themes were framed in the context of an alien political cosmology, not of artificial virtue and its corruption, but of idealism, progress, and perfectibility. In them, we no longer find the constitutive intuition of republican contingency, according to which not just shame, exposure, and remembrance of one's duty, but also perspective, distance, and reflection are the fleeting products of activated virtue, rather than the accomplishments of progressive civilisation. Whatever the exact conception of civil society - i.e., markets, families, voluntary intermediate associations, Hegelian corporations, or parliamentary publics - and whatever its corresponding 'civility', liberal understandings tended to assume their *natural*, causally independent character.

If these remarks begin to sound Arendtian, this is no coincidence. Arendt's work may thus be seen as a sustained modern reflection on the nature and contingency of the second type of civic space, with which Tocqueville had been preoccupied. To Arendt, the very existence of the different voices and *perspectives*, i.e., what she called the 'space of appearances', and even the capacity to judge and reflect independently, as a public or private activity ('representative thought' and the 'two-in-one' of consciousness) were artificial and fragile achievements, human potentials which depended upon a functioning public sphere, keeping the pathologies of modernity at bay.

Tocqueville and Arendt were late republican thinkers who finally applied the intuition of artificiality and fragility to the analysis of reflective public space. Such a

15. Rosenblum (1994a; 1994b).

16. E.g., Locke's condemnation of the "narrowness of spirit on all sides [which] has undoubtedly been the principal occasion of our miseries and confusions", Locke, *Letter on Toleration* (p.11); Kant's famous celebration of Enlightenment as "man's emergence from his self-incurred immaturity", Kant, *What is Enlightenment?*, in *Political Writings* (p.54); Mill's sustained argument for freedom of speech and political participation, Mill, *On Liberty*, Chapter 2 in *Utilitarianism, On Liberty, and Considerations on Representative Government*. On the genesis of the liberal theory of the public sphere, see Habermas (1962:112-71).

space exists only as long as actual individuals are around to reflect, to discuss, to judge, or just to be there. Arendt and Tocqueville were aware that civilisation, enlightenment, and education did not necessarily prevent public space from degenerating. Only too easily do citizens decide to stay away; too quickly do they unlearn the capacity to test their own habitual views or the prevailing prejudices of society against the needs and perspectives of other groups; too transient is the habit of thinking for oneself, of living in what Arendt called the republic of the mind.

Bracketing huge internal differences, the republican perspectives we have discussed treat the intersubjective space of virtue and motivation to virtue, whatever its character, as something to be created, maintained, or cared for, also in terms of legitimate and necessary political intervention. In terms of Nancy Rosenblum's useful typology, the republican conception of political space would be closer to what she calls *democratic* civil society, where secondary associations, participatory structures, educational institutions, even (in some republican schemes) the family, are judged, supported, or directed according to how well they perform as vehicles of socialisation and motivation to good citizenship.

4. Political Autonomy and the Content of Libertas

The third fragility of liberty is about the manner in which republican common liberty is given its specific legal and constitutional content through self-government, understood here in its specific sense of collective self-legislation. We need to distinguish this idea from the value of *moral* autonomy which, as we saw in the previous chapter, was an adventitious (liberal) Enlightenment element. Again, in the republican tradition, the collective determination of its principal legal forms by a political community was not, until Rousseau and Jefferson, associated with the notion of a rational confirmation of the principles by which an individual governed himself, either as an individual or as a member of a collectively. Because of the ambiguity of the term autonomy, and because we also use the term self-government in a more generic sense, we may introduce, for our purposes, the expression *political autonomy*.

Political self-government, to repeat another crucial point, was not, *pace* Berlin and Constant, the republican conception of liberty, but only a part of it. This part was associated with collective independence from foreign rulers, and, via a popular element, from internal tyranny. In many writers of the Enlightenment, this part was called political liberty and seen to consist of man's collectively exercised (natural) political rights. Another part of liberty, closely related, consisted in the legal status of the individual under the law. This last element, we saw, was there already in the Greek writers. However, before proceeding, we should distinguish between political self-government as concerned with the formulation of, and debate about, basic law (constitutions, constitutional revisions), and political self-government as concerned with the act of collective legislation and decision-making as such. Al-

though it never replaced individual legal liberty, it is important to note that also the latter sense of political self-government or political liberty was prominent in Greek and Renaissance thought and continuing into the Atlantic tradition. In the more radical Anti-Federalists, for instance, the direct, collectively exercised *popular rule* of a people (a state) was simply seen as the best means of self-protection, preventing anybody else (the federal government) from ruling over it. Self-government, here shading into the first dimension of fragility, denoted the self-protective state of being in collective control of one's own affairs.

But political self-government or autonomy was also, more specifically, about the substantial content of *libertas*. It is this aspect which we have in mind as the third fragility of liberty. 'Content' refers to the specific constitutional rights-settlement and historical-institutional form of a people's *libertas*. More particularly, it refers to the importance for individuals and collectives of being able to influence this content, and about the difficulty but also the supreme necessity of securing a reasonable, and reasonably stable, popular agreement on this content. Civic virtue, here, is the political participation taking place in connection with constitutional deliberation, including ongoing public debates about 'our liberty'. More particularly, it refers to the political wisdom and good judgement required by leaders and people alike. To bring into perspective this third aspect, two misunderstandings must be avoided.

First, there was no incompatibility *per se* between republican and natural rights discourse (the latter was used by Harrington, Sidney, Trenchard and Gordon, Reid, Paine, Jefferson, and Federalists and Anti-Federalists alike). There is no truth in the claim that republicanism was inherently relativistic, in the sense that 'liberty' could refer to any culturally distinct common good whatsoever.¹⁷ We have continuously stressed the core constitutive value of private liberty as security of person, family and possessions. To Aristotle and the Greek democrats, to Cicero, and to Machiavelli the existence of these political ideals was treated as commonsensically obvious, simply not an issue - the discourse was not about philosophical justification, but political practice and legal construction as means to secure these values. The early Enlightenment simply added the notion, which had emerged gradually from Calvinist receptions of natural law, that all men were equal in dignity before God, and that hence everybody had a *prima facie* moral claim to the enjoyment of the liberty which the republican tradition considered to be such a great good. This radical conception of *universal* rights to liberty originally intrinsically tied to notions of duty and self-control, could still be easily coupled to republican ideas of worthiness, as when Sidney, Ferguson, and the Americans talked of natural rights as a prize that had to be 'deserved', and could certainly only be maintained, by a virtuous people.

17. As claimed by Taylor (1989).

Secondly, The Enlightenment conception of rights, as developing from Locke in Britain or from Kant in Germany, were part of a modernisation and individualisation of the value of liberty. Indeed, one of the more fruitful criteria for dating the beginning of liberal thought is the gradual introduction of modern conceptions of an *abstract* society of different, individualised citizens with each their private life. Tied to the invention of a culturally and socially pluralist commercial society, the sphere of intimacy, and philosophical scepticism about absolute knowledge and religious dogma, this liberalism is epitomised in the idea of *toleration* of what is nowadays called 'conceptions of the good' along with a set of principles and institutions associated with modern rule of law. Early republicanism contained less sophisticated species of "liberty before liberalism"¹⁸ which did not have these modern attributes. The origin of the latter was the experience of religious persecution and the possibility that not only tyrants and tax-collectors, but also fanatic mobs, religious institutions, and prejudiced majority communities jeopardised the liberty of the individual. But also these new liberal conceptions of toleration, freedom of consciousness, diversity of interests, and legal process were assimilated to republican discourse, as most evident in Jefferson, Madison, and many Anti-Federalists.

The republican conception of common liberty as a deliberative outcome was not distinct because of its incompatibility with natural rights doctrines or with modern abstract individualism and toleration. The republican impulse, also in these new conceptual surroundings, simply consisted of various ways to insist on the need for deliberative, popular involvement in the framing of constitutions. To show this, in a very general way, we may employ a contrast often made in American legal and democratic theory, between *populism* and *liberalism*¹⁹:

Firstly, republican discourse was populist in the sense of emphasising that constitutions and legal forms were conventionalist dispensations of a political common good. In classical forms this involved some idea of striking a balance between different legitimate interests of a society. Common liberty required a constitutional form which was determined as a matter of prudence, typically by a wise legislator. With the rise of popular sovereignty and equal natural rights doctrines, republican normative discourse would stress that only a limited number of rights, relating to life, personal security, and freedom of consciousness followed from natural law. Legitimate common interests of historically and geographically situated collectivities were too diverse and changing to admit of a single ahistorical formulation in the blunt, if rhetorically potent, language of natural rights. Jefferson, Paine, many Anti-Federalists, and in principle Madison, regarded specific legal forms of property as contingent expressions of a general right to subsistence. State-of-nature arguments were typically used to establish limits to political authority,

18. Skinner (1998).

19. See the distinction in Gutmann (1993), also Gutmann & Thompson (1996).

not to suggest a possibility of self-sufficient enjoyment of rights outside of society. And by contrast to Locke, political rights, pooled to collective self-government, were not only a possibility for legitimate withdrawal of one's (tacit) consent to an unjust authority, but also the means to *authorise*, in a more substantial, explicit, and creative manner, the common affairs of a people.

Still, it is important to remember that few, if any, of the American republicans thought that political rights were the most basic, and that other (civil) rights derived from them. When natural rights were talked of, political rights were only a part of them, although some, including Hamilton, unreflectively assumed that collective self-government would not collide with these other rights - by implication equating the will of political majorities with the basic interest of any individual. In light of this, a recent formulation of republican populism by Habermas is somewhat off the mark. In view of its influence we may quote him at some length:

According to the republican view, the status of citizens is not determined by the model of negative liberties to which they can lay claim as private persons. Rather, political rights - preeminently rights of political participation and communication - are positive liberties. They guarantee not freedom from external compulsion but the possibility of participation in a common praxis, through the exercise of which citizens can first make themselves into what they want to be - politically autonomous authors of a community of free and equal persons. To this extent, the political process does not just serve to keep government activity under the surveillance of citizens who have already acquired a prior social autonomy in the exercise of their private rights and pre-political liberties (...) So the state's *raison d'être* does not lie primarily in the protection of equal private rights, but in the guarantee of an inclusive opinion- and will-formation in which free and equal citizens reach an understanding as to which goals and norms lie in the equal interest of all (...) While in the liberal view the point of a legal order is to make it possible to determine in each case which individuals are entitled to which rights, in the republican view these "subjective" rights owe their existence to an "objective" legal order that both enables and guarantees the integrity of an autonomous life in common based on mutual respect. For republicans, rights ultimately are nothing but determinations of the prevailing political will, while for liberals some rights are always grounded in a higher law of reason²⁰

Habermas insists that this process aims at determining exactly which legal guarantees constitute each citizen's 'negative' liberty. He also seeks, 'pragmatically', to derive a quite comprehensive set of welfare-liberal rights from the very acceptance

of a discourse situation. But whatever the merits or demerits of Habermas' philosophical and legal sociological analysis, his historical account is incorrect. Enlightenment republicans like Jefferson, Madison, and Paine did not deny that certain very important rights could be "grounded in a higher law of reason". While knowing that such rights could only become a social reality through politics, they often reserved the possibility of criticising politics by appealing to values that lay beyond this practice.²¹

The difference between republicanism and liberalism, here, is less clear-cut, more a matter of degree. The contrast is most clear and makes most sense at those limiting points of the liberal history of ideas which are characterised by a search for rationally derived political principles, prior to, and independent of the political process. In my view, what Ackerman calls liberal "foundationalism" differs from historical republican populism, *not, or not necessarily*, in the sense that republican democratic will-formation is completely prior to rights, but in the sense of the latter's much more limited ambition about which political principles may be 'taken off the agenda', as Rawls would put it.²² By contrast, Kant's attempts to deduce principles which any rational person must be assumed to will, despite the occasional use of republican language, was distinctly unrepublican and 'foundationalist'.²³ So was the ambition of nineteenth century utilitarians to base all legislation on the overarching normative principle of utility, and to believe that this principle could be scientifically articulated. Finally, to the extent that Locke was read as introducing a radically anti-political, even anarchist, *laissez-faire* principle of self-ownership, where only 'original' rights of state-of-nature agents plus principles on which everybody could agree, had political 'legitimacy', we cannot get any further away.²⁴

Secondly, apart from its recognition of a large degree of normative contingency, republican discourse was populist in more political and practical ways. It integrated the language of moral justification, whatever its content, with a language of political legitimation. In Machiavelli, Montesquieu, all American writers, and Tocqueville, a profound distrust of metaphysics and abstract philosophy or 'theory' was visible.²⁵

An important aspect of this, recurring throughout the tradition, was the need to deal with individuals and groups 'as they are'. Less sophisticated writers like Trenchard and Gordon, Harrington, and many Anti-Federalists, when they spoke of

20. Habermas (1994b:8); cp. also Gutmann (1993).

21. See Habermas (1992a:109-65); Bellamy (1994:251-52).

22. Ackerman (1991:11ff); cp. Bellamy (1994:249-50).

23. But see Maihofer (1990).

24. Nozick (1974); for the history of moral arguments for *laissez-faire*, see Viner (1960); Rashid (1986).

25. E.g., Tocqueville's dismissal of "Metaphysics and all the purely theoretic sciences, which do not serve anything in the reality of life" (Letter to M. Charles, November 22, 1831, cited from Lively (1962:25)).

virtuous regard for the common good, simply had in mind the rational understanding of an easily accessible collective interest of rather selfish individuals, and the avoiding of free-riding. Harrington thought this to be a matter of political machinery, whereas Rousseau was well aware of the tough homogenising pressures that were required before the general will had become an undisputed social fact, readily perceived by the simple peasant under the village oak. However, a great many republicans recognised the inevitability of conflicts between groups in society, whether perceived as natural estates with different *umori*, or as a plurality of opinions and economic interest. Republican discourse always involved a broad idea of the possibility of citizens to adopt and develop more reasonable and impartial views than they would have as private individuals, providing their uncorrupted independence could be maintained. But with a few exceptions and some differences of emphasis it was also recognised that this possibility was difficult to realise, even when politics went well. In pluralist societies with less than ideal citizens, what could be hoped for and aimed at was to find constitutional settlements which reflected a 'balanced' common good, where the most arbitrary and sinister interests were excluded. Self-government typically aimed at establishing working, stable *concordia*, and involved the exercise of *moderation*, here understood as a political sense of restraint and willingness to give and take. Political deliberation, at best, could 'launder' disagreements to some extent, cause opinions to be recognised as sincerely held, and, through procedural arrangements, induce citizens to regard as legitimate also some things they would not have chosen themselves.

Closely related to the above was the notion, prominent again in the American tradition, that political settlements had to be actually consented to. The idea of consent was of course linked to the conception of popular sovereignty and constitutional justification. Here, as Lockean contract theory travelled across the Atlantic, consent no longer denoted a hypothetical original alienation of executive rights of nature, entrusting authority to a ruler, or the principled possibility of its withdrawal after a 'train of abuses'. Rather, it became conceived as the periodic exercise of a deliberate and considered political act by concrete citizens. Moreover, as a further important aspect to this idea, actual expression of consent and even its periodical renewal was now considered to be a precondition for stability and political peace, as the conscious and reflective recognition by citizens of their common liberty was a necessary first condition for their propensity to virtue and patriotic allegiance.

Finally, a third 'political' aspect of republican self-government consists in the recognition that constitutional politics and deliberation was importantly an *empirical* process. Republicans constantly stress the centrality of practical wisdom and experience in politics. What I have in mind is not only the need to accept the sub-optimality of all solutions political, which arises from the pluralist and conflictual nature of civil society. Classical and modern republicans were constantly con-

cerned with the need to consider, and the difficulty of predicting, how laws and constitutions would work. Laws, to Machiavelli and the Greeks, were deemed 'good' or 'bad' according to empirical and causal considerations, which entailed a large element of contingency, even luck. Madison stressed that exact and reliable political knowledge was scarce. Political deliberation, of a more or less democratic sort, was a way to tap, sort and process, not only preferences and principles, but considerations of political sociology and psychology, geographical and cultural particularity, theories and experiences of propensity to virtue and corruption, and knowledge of political effects on the distribution of property and power. In such deliberations, as evidenced in the aftermath of the Philadelphia debates, error was likely to occur, circumstances were likely to change, and legislation and institutions alike were likely to have unexpected consequences. Although Madison, like Hume, spoke of politics as a 'science', it was the latter, along with his real American disciple Hamilton, who sought to reduce government to unpolitical technological manipulation.

We have seen several typical republican modalities of such constitutional contingency. In the most general way, they correspond to an idea of 'the public thing' as an historical and secular entity - a collective legal arrangement (*res*) which is talked about by a plurality of citizens (*publica*), and on whose specific form some measure of agreement and support simply has to be reached, preserved through time, or reformulated.²⁶ The most important aspect regarded the conceptualisation of common liberty as the achievement of a geographically distinct *people*, aiming at securing *its* specific constitutional version of liberty in national self-government. Rousseau's general will, by contrast to Kant's (or Rawls') later cosmopolitan-rationalist conception, was the concrete expression of the political will of a bounded group, ordering its own affairs. Also, Machiavelli clearly implied, and Montesquieu, Paine, and Jefferson stressed, that different laws and institutions may suit different peoples' circumstances, cultures, and political temperaments.

The idea of a liberty as the self-determination of a people was particularly prominent in the debate between Federalists and Anti-Federalists, as was the constitutive ambiguity of this idea as regards the difficulty of delineating the shape of 'a people'. Here, liberty was closely related to size and locality and to the dangers of centralisation and distance between governed and governors. These dangers were not primarily about the legitimate variety of cultural expression *per se*. Rather, they concerned the specific material circumstances and needs of localities. They were about how, in large states, the interests of small groups of people might be difficult to safeguard, when rulers were far away, difficult to call to account, and likely to

26. "La res publica, c'est ce qui dans un peuple concerne tout un chacun et est donc discuté publiquement ... Ainsi contre toute attente, res a une signification primordialement juridique, au sens de ce qui concerne l'homme" (Archives de philosophie du droit, Sirey: 1979, vol. 24 (p.44), cited from Dogouet (1993:13)).

dominate the interests of smaller localities. And they concerned the realistic political format of virtue and patriotic allegiance. The Federalist response was both a denial of the impossibility of popular control of, and identification with, a powerful centre and an argument about the need to transcend local differences and settle for a common liberty of more general nature and a more robust and durable constitutional order which was by now seen to require a large, rather than a small republic.

Finally, republican political self-government entailed the possibility of change over time in the constitutional order. Rousseau's idea that citizens from time to time should gather and confirm the constitutional order reflected the recognition that common liberty, in an important sense, is only safe as long as citizens agree and remind each other about its nature. But Machiavelli and, more explicitly, Sidney, Jefferson, Paine, and Madison in different ways acknowledged the limitations of human reason and foresight and the likelihood of future revisions in light of new circumstances as well as new legitimate social demands.

The need for such revisions was likely to be slowly recognised and fiercely contested. Republican thinkers knew that even in the best of circumstances conflict and imperfect compromise was much more likely than consensus, and that compared to the perfect justice of philosopher kings and philosophers, republics were always only second best. The content of historical constitutions was determined by power struggles, accidents, changing alliances, and external pressures. Because these and other factors remained, the quality of a settlement was not solely to be judged by its approximation to abstract justice, but also according to its prudential balancing of the opposed interests of social groups, its ability to speak to *some* shared interests, and its general capacity to secure legitimacy, durability and stability. Hence the republican pathos of 'founding': Because of the numerous dangers threatening a new political order, and because of the importance of having some order, also imperfect results become imbued with an authority that increases with age.

Also the third fragility of liberty has its constitutive ambiguities and tensions. One is between political 'arguing' and the necessity of accepting interest-brokering or 'bargaining'.²⁷ The outcome of constitutional deliberation is a *concordia*, a decision, in Arendt's words, to 'stay together', which is hedged by mutual promise.²⁸ Although it presumes an uncontested core of *libertas*, it does not constitute transhistorically valid moral knowledge, and the notion of installing in time a 'well-ordered and just society' of, say, Rawlsian comprehensiveness, is hardly an option. Only a minority of republican writers believed that a people, legislating for itself, would inevitably reach the most rational and just conclusions. Most writers recognised a constitutive tension in republican citizenship. It was important for every-

27. The distinction is Elster's.

28. Arendt (1973:181-82).

body that *libertas* might somehow find its abode in the world, as a stable protection against arbitrary state power, including the 'wicked' democratic schemes that Madison feared. Yet, the rights of citizenship necessarily had their origin in political activity and derived their political legitimation, and hence the stability they might have, ultimately from the fallible will of the people. And they did so, even for Madison, not only as the result of a single initial founding experience that henceforward protected *libertas* from all dangers, taking it out of politics. Republicanism employed a political language which subordinated, in range of importance, the problems of moral justification to those of political legitimation. But in doing so, the tradition had nothing much to say about the normative limits of democratic legitimacy, or the place of individual political criticism and civil disobedience. This first tension is related to the contrast made above to various forms of liberal rationalism.

A second constitutive tension is between the more or less 'conservative' or 'radical' (democratic) voices in the republican tradition. The tension exists between the authority and prudence of original constitutional settlements, and their necessary amendment or reformulation, between 'beginning' and a more or less frequent 'return'.²⁹ In America, some, like Jefferson and Paine, entertained democratic conceptions of 'moderation', believing in the capacity of the people to educate itself, show good sense, make valuable contributions of opinion, and do so frequently. Madison, much more sanguine, thought recourse to the people should be a last and rare constitutional resort. And aristocratic tempers like Adams and Hamilton tended to consider the people irreparably immoderate, jealous, and unwise, hoping to leave political affairs to a select few of naturally virtuous disposition.

Correspondingly, different ideas existed about the manner of popular legitimacy. To some, like Hamilton and to a large extent Madison, legitimacy was primarily a matter of habituation, identification with, and acceptance of, benign government evolving over time. Others, like Jefferson and many Anti-Federalists, thought that legitimacy and patriotism required continuous, active and reflective confirmation. The elitism of Madison and Adams was part of a long tradition. Before them, Harrington, Guicciardini, Cicero, and Aristotle had all expressed severe reservations about the capacities of the ordinary people, and about the danger of unleashing their passions and jealousies. Each writer had his more democratic contemporaries, who were either less afraid of the people, or less willing to persuade themselves, as did Adams, that the rich and well-born were the natural custodians and interpreters of an organic and hierarchically ordered common good. Although the conservative authors of the American debate reserved a small place for popular

29. Ackerman's imaginative reading of Madison employs the metaphor of a 'constitutional threshold'. New rights claims must have the capacity to persuade majorities, and their supporters must prevail over some period of time for a constitutional resettlement to be viable (Ackerman 1991).

consent, and although they certainly *started* from a republican analysis of civic virtue, they began to depart from this tradition to the extent that they became influenced by those new Enlightenment intellectuals, above all Hume, who valued constitutionalism and rule of law, but feared the unruly people as much as the despotism of kings and the fanaticism of priests, and seriously believed that liberty could be secured without its participation.³⁰

5. Patriotism

The fourth dimension of the fragility of liberty, and its corresponding modes of civic activity, is the most misunderstood. We have already seen, in the second dimension, how republicanism challenges facile accounts of dispositions and motivations to private as well as public virtue. To recapitulate, republicanism is sceptical about accounts of civil society that represent acceptable moral behaviour as a natural or automatic outcome of enlightened egoism, the cooling effects of commerce or luxury, a rational capacity for justice, 'sympathy', or human perfectability and progress. Even as aspects of these 'liberal' discourses of the Enlightenment were employed, a republican moment continued to exist which emphasised that both what we may call the *abilities* to behave justly (capacities for trust, reflectivity, or impartiality), and the *propensities* to do so (the motivation and incentive structures of public space) were fragile, transient, and non-obvious.

However, the tradition also presents us with a related but analytically distinct conceptualisation of civic motivation. Throughout the tradition we find the argument that ability and propensity to virtuous behaviour - respecting justice, however 'thick' or 'thin', let alone defending just institutions when this involves sacrifice or danger - presupposes something more, namely *solidarity* and *identification* with a specific group. The crucial question is not just whether individuals are able and willing to act virtuously in the abstract, or to do so in more or less demanding ways, but also whether or not they are able and willing to do so with reference to a particular group of people. The fourth dimension of the fragility of liberty argument of republicanism consists in recognition of the non-obviousness of such willingness, and in conceptualising *patriotism* or civic solidarity as both a necessary precondition of motivation to civic virtue *and* itself - in two different ways - the product of active citizenship.

The concept of patriotism is central to the entire republican tradition.³¹ But it is important to understand what it means. The virtuous citizen, from Thucydides,

30. On the relation between early liberalism and democracy, see Sartori (1987:Chap. 13).

31. The concept has been reconstructed by Mary Dietz (1989) and in particular by Maurizio Viroli (1993; 1995) who traces it as historically, and not only conceptually, distinct from nationalism. Viroli's important book also contains a spirited attack on recent communitarian attempts (see the discussion of Taylor below) to hi-

Cicero and Machiavelli to Ferguson, Jefferson, and Tocqueville, was someone who loves his *patria*, or fatherland. He might love it, as Machiavelli and his contemporaries would sometimes put it, more than 'his soul', or as in Cicero (and perhaps also in Machiavelli), exactly because he cared for his afterlife. Patriotism, very often, was simply a short-hand for willingness to make sacrifices for the sake of the common good of the republic.

Also, a patriot, in Greek writers, Cicero, and Machiavelli, but living on as a potent motive also in later republicanism, was someone who deserved praise and esteem, and who might indeed expect this, along with the fame and recognition that would make his name remembered or even immortal after his death. However, a patriot was also - and this idea does not change throughout the tradition, although it becomes highly explicit in writers like Trenchard and Gordon, Sidney, and most Anti-Federalists - someone who, while loving and risking his life for his *patria*, is securing his own most basic interest. And interest, here, is the familiar republican one in common liberty and security - the goods that can only be enjoyed in the long run by citizens who are willing to cooperate with, and make sacrifices for, one another.

'Patriot' and 'patriotism' may signify an array of things. It is a citizen ideal worth aspiring for, and for which someone may be held in esteem. It is also, as most obviously in Cicero, a moral duty. It is clearly also a collectively rational form of behaviour, at least for the enlightened citizen who does not cheat. But there is more. The concept also partakes in the republican sensitivity to corruption. A patriot is someone who has not been corrupted in the sense that he still *remembers* what his liberty consists in and why it is precious, where it came from, which dangers threaten it, and how its survival is connected to the lives of himself and his fellow citizens. He is 'public spirited' in the sense of *identifying* with the liberty project of his and his compatriots' *patria*, as opposed to being a person who suffers from the illusion of owning his liberty as a private possession.

These different aspects reflect a specific and remarkably constant republican socio-psychology of civic motivation. In all the authors discussed, we find an appeal to the obvious interest everybody will have in personal liberty and security and to the common-sensically rational reasons for each to be virtuous (providing that everybody else is).³² All take as a point of departure that, whatever else is needed, virtuous citizens must have a material source to their virtue, something to be grateful about, or something for which they may be brought to recognise an obligation. Nor

jack the term and pollute its original meaning. I believe my proposal here, of linking patriotism to political activity and the fragility of liberty, is complementary to Viroli's work.

32. For historical evidence from Renaissance Florence sources, see written sources in Brucker (1971:81-83).

is there any doubt that the language of duty and citizenship is not only an 'aesthetic' or heroic ideal, but also a moral one.³³

However, the republican argument again concerns the empirical fragility, not just of liberty directly, but of the effectiveness of either of these motivating mechanisms in making citizens willing to preserve and protect their common liberty. In recognition of this problem, the republican tradition contains two types of solutions, both of which use political activity as a mechanism for enhancing patriotic identification and civic solidarity. The two solutions share the idea that common liberty, in order to work as motivation, must be made vivid and concrete for citizens, that securing it must become experienced as directly linked to cooperation and common activities, and, often or to some degree, that these activities enhance solidarity and patriotism by coming to constitute an *independent value* for citizens.

The first of these solutions is about the public commemoration of the origin or dangerous rites of passage of the republic, the way in which *libertas* was first instituted, or later protected and enhanced. Civic virtue, here, is helped along by connecting the rational content as well as the moral dignity of sacrifice to stories and images that dramatise and render vivid the particular common past of a group. It is the particular orchestration of a civic history - of foundation, revolution, danger and consolidation - that has at its centre 'our liberty'. This narrative, public pathos of the 'common thing' has two faces in the tradition.

One of these is the top-down perspective of political manipulation, the need to mobilise virtue by using whatever instruments which are deemed necessary by an elite, typically in the form of civic religious rites, customs, and festivals. This perspective implicitly distinguishes between the point of view and civic capacities of the ordinary citizen and the elite, the ruled and the rulers. In Cicero, Machiavelli, and Rousseau, where virtue is often the willingness to stand and fight, faith in the mental capacities and the strength of character of the people is low. Citizens tend to be governed and governable by passion, and virtue has to be aided by a social technology of managing and directing this passion. Public commemoration is mobilisation of the masses, using whatever means necessary, occasionally even including such that eventually short-circuit rationality - as in Rousseau's use of proto-nationalist identification.

33. Shelley Burt, in a very good systematic account of republican conceptions of civic virtue, has argued that there is not one but three different republican psychologies of virtue - based on self-interest, the demanding call of moral reason and duty, and passionate identification respectively. Clearly, she has a valid point, when stressing the sheer variety of versions of the republican argument, none of which rest on an optimistic teleology of man as 'political animal'. No doubt, Rousseau places much more emphasis on passion than does Tocqueville or Cicero, and Tocqueville's rational citizen has his own interests more in mind than Cicero's. But overemphasising these differences misses the underlying permanence of the argument I have traced, which significantly combines the three (Burt 1990; 1992).

Yet, even in Machiavelli, the bird's eye elite perspective does not stand alone. Although the main focus is on the way memory is manipulated, i.e., erased or maintained by the prince, under certain circumstances when *virtu* has been established, even when liberty is lost or threatened, citizens will not be able to *forget* their liberty and the good laws of the republic.³⁴ Against Machiavelli's belief that a free people is better at remembering stands Tocqueville's more sombre diagnosis of democratic man who is only too easily alienated from his past, and who has to be educated by the aristocratic observer who loves liberty and knows the history of its costs. While Tocqueville placed great emphasis on religion (not civic religion proper, yet still ecumenical national churches that had been civic in the sense of supporting equality and liberty), he also observed the role of a particularly American 'reflective patriotism'. And this democratic patriotism, which Tocqueville contrasted with what he saw, even more than did Montesquieu, as unquestioning loyalty and affection for one's birthplace, was a rational, enlightened, love of the country to which a citizen owed his liberty. It was the same rational, rights-centred, patriotism, which Jefferson and the Anti-Federalists wished to underpin with the constitutional symbolism of a bill of rights, and to which both sides of the National Debate would appeal as they spoke for or against the new constitution.

Patriotism as reflective memory of the past is evident in the very way that republican discourse is structured. Several commentators have stressed how republican discourse differs in its structure and temporal references from the discourse of more traditional societies. One aspect of this reflective remembrance is the dual notion that the republic is a fragile entity inserted by humans into time, which might 'not have been', and whose shape (the way a republic is started by those who 'begin') might have been altogether different. Bruce James Smith notes

the uncertain status of the *res publica* in 'the order of things' and yet ...
the enduring conviction, founded on personal practice, of its intrinsic
value³⁵

It is this double knowledge of the hazards, uncertainties, and imperfections of the republic which nurtures the knowledge that it is something very valuable, a "treasure", as Hannah Arendt called it,³⁶ to be cared for and transmitted through time. It is most clearly seen, perhaps, in the self-conscious writings of Jefferson, Madison and other American revolutionaries. Appreciation of contingency was a main source

34. "And he who becomes master of a city that used to be free and does not destroy her can expect to be destroyed by her" (Machiavelli, *Discourses*, I,26). Smith, who quotes the same passage, claims that in "Republics ... memory of their ancient institutions is somehow etched into the mind of every citizen, impervious to the benevolence of princes and the ravages of time, passed on from father to son even in the face of tyranny" (Smith 1985:81).

35. Smith (1985:9).

36. Arendt (1973:215ff).

of the 'love of the city' of these republicans: It was the love of what cannot be taken for granted, exactly because it cannot. It is in this manner that it must be distinguished from custom, way of life, and all manners of relating to the past which are habitual and unreflective.

It is a further feature of this reflective remembrance, according to both Smith and Pocock, and behind them Arendt, that common memories are often characterised by interpretative contests as their meanings gradually change over time:

A republic's self-conception is mediated through tales and stories - the remembrance of words and deeds. In these tales and stories is preserved a special kind of knowledge of 'a free people'. Political memory is the concrete conceptualisation of the experience of a people. (...) Only by sifting, distilling, rediscovering its traditions can the *res publica* preserve itself (...) Such a tradition is susceptible to rearrangement (reinterpretation, recreation, recovery) because it is the object of 'incessant talk' [Arendt's term, PM]. The republic is both the beneficiary and the victim of the inexactness of language. In the ambiguity of words we find one spring of republican vitality ... [Yet] ... the struggle over meanings of words is circumscribed by the limits of a public language drawn from common mnemonic images³⁷

The quote elaborates on the idea that a republic's decay, its being forgotten, is prevented through the maintenance of a specific type of public dialogue. Dialogue, here, is not about abstract values or principles, but the concrete meaning of a country's past. Political values and principles, such as the value of liberty and the ideal of virtuous citizenship in defence of liberty, are talked about as they are exemplified by historical experience, and rendered vivid through the use of rhetorical techniques and narrative structuring.

In this connection, we may think also of Hannah Arendt's writings about reflective or narrative historical judgement, which corresponded to her fascination with the American revolution. The original founding experience and the experiences of strife and upheavals, she thought, gave a degree of authority to the constitution which could still oblige those who come after not to take its existence too lightly, but to affirm and appreciate it as an inspiration for action. The very difficulty and great historical significance of achieving a concord between individuals with different backgrounds and interests provided a degree of shared direction, reminding all of a political community's common 'fate' which was the basis of political identity. It made it possible for citizens to know 'who they are', because they might refer to the past and to other people who shared this past.³⁸

37. Smith (1985:9,21-22).

38. Arendt (1958b:178-81; 1973:198-214).

While the concreteness of common liberty can be connected to political participation through collective acts of public re-membering, also a second, more direct connection may be found. The very activity of doing something important with other citizens may create bonds of solidarity which are strong enough to constitute a civic 'we', which in turn serves as a further motivation for action, thus making civic virtue self-reinforcing. Over and above the direct instrumental point of civic activity, virtually all republican authors are concerned that citizens who retreat into privacy will 'forget' in the sense noted above. Again, the chosen perspective may be more or less 'top-down' or 'bottom-up'. Machiavelli primarily advocated civic militias as opposed to mercenary armies - a theme constantly rehearsed in later republican writings - because citizens that were required to fight for their liberty were reminded at one and the same time of the value, the fragility, and the cooperative basis of their enjoyment of citizenship. Tocqueville presented the most articulate case (but the theme can be found in different forms in Sidney, Cato's letters, Rousseau, Jefferson, and several Anti-Federalists) for participation as the means to experience how the interests of the individual, 'rightly understood', were bound up with those of his fellow citizens and the community as a whole.

Both of these modalities of patriotism are connected to a republican concern with *time*. The first, clearly, is about the past. However, it is about a past that is not over yet, because its symbolic meaning is open to new reconstructions or re-memberings. The second is concerned with the future. Here, solidarity and patriotism is not so much a matter of what *we* achieved, or how and when we did it, but about who the *we* is that is going to achieve something, also in the future, and in what ways *we* are cooperating to achieve it.

Before discussing the republican idea of patriotism in more detail, consider why the historical contrast between republicanism and 'liberalism', on this fourth dimension, is relatively clear. To the extent that the general argument about civic virtue and *libertas* was replaced by schemes of countervailing interests and reliance on the stabilising effects of commerce and commercial spirit, the language of patriotism was largely discredited. Hobbes, of course, founded his own distinct tradition which was special by simply not regarding solidarity as an issue. In *Leviathan*, political obligation became a matter of individual interest and coercive control within the jurisdiction of a mighty sovereign.³⁹ Locke's conception of civic motivation was typical of much Puritan natural law thinking in its reliance on an inculcated disposition to do one's Christian duty; whereas Hume, Smith, Hamilton, and in his un-republican moods Madison in each their ways expected a habitual allegiance to (reasonably benign) political authorities to develop over time, along with the habit of abiding by law and contract. The background for these conceptions was the be-

39. Hobbes, *The Leviathan*, I,13-16; II,17-18; also Austin, *Lectures on Jurisprudence*, I,1-6.

lief that what modern commercial societies primarily required from its citizens were the passive virtues of submission and restraint. With significant exceptions like Smith and, less ambiguously, Ferguson, it became a commonplace for British and French Enlightenment thinkers to represent patriotism as a blind and dangerous passion on a par with religious fanaticism.

We know that Kant, for political purposes, believed less in the force of rational duty or a 'sense of justice' than either later day neo-Kantian liberals like Rawls, or earlier natural rights theories. The overwhelming demand in Kant, we recall, was not only to live together in justice, but to extend such cooperation in justice to neighbouring peoples whenever possible, until a pacific world federation could be established.⁴⁰ However, such a state of affairs, in Kant's view, could only be expected when violent conflict would persuade citizens, which he expected to be devils rather than angels, to find a peaceful concord. However, by contrast to Kant's political theory, idealist liberal writers like Hegel and T.H. Green did produce elaborate conceptions of rational obligation, perceived to have actual motivating power.⁴¹

40. According to Kant, it is a rational, *a priori* idea of an unlawful state of nature that every human being

must leave the state of nature, in which everybody follows its own judgment, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion ... that is ... enter a civil condition (Kant, *The Metaphysics of Morals*, §44)

And, regarding federation,

Peoples who have grouped themselves into nation states may be judged in the same way as individual men living in the state of nature, independent of external laws; for they are a standing offence to one another by the very fact that they are neighbours. Each nation ... can and ought to demand of the others that they should enter along with it into a constitution similar to the civil one (Kant, *Perpetual Peace*, in *Political Writings* (p.102))

For discussion, see Ingram (1995).

41. T.H. Green, for instance, was much more optimistic than Kant, in his conception of reflective morality and progressive development of self-consciousness. Like Hegel and Fichte, his idealistic notion of self-imposed obligation and rational identification with the political community as a moral entity, of which each citizen was a part (providing that it conformed to universal or cosmopolitan right), and whose institutions contributed to the full development of each, may be seen to make up the second generation of that belief in moral progress, which we saw originating in philosophers like Condorcet. For instance,

The truly loyal man is not he who shouts for king and constitution, or who yields a blind obedience to the routine of existing institutions, but he who looks beyond them to the universal law of the common reason of men, and in reverence for this yields a willing and hearty obedience to the rules in which it embodies itself for the establishment of right dealing in society (Green, 'Loyalty', *Lectures on the Principles of Political Obligation and other Writings* (p.306); cp. *Lectures*, G, 113-36.

Secondly, however the *Rechtstaat* of Green or Kant or other liberals should be seen to have come about and be supported - by a rational sense of justice, by habituation, force of law, or a slowly working divine and natural design - it had to presuppose that the structure of obligations developed within a *bounded group* of people: a moral 'division of labour' was going on which involved, at least, the existence of state boundaries. Yet early liberals did not thematize this. The combination of abstract state of nature and contract theory, which rendered citizenship a universal right of all, with less demanding conceptions of civic obligation, served to transform the manner in which the relation between the citizen and the community was conceptualised. By and large, liberal thought from Hobbes and Locke to Kant was concerned with the question of why and under which circumstances a person *should* obey an authority, and, secondly, what would induce him to do so, be it force, habit, or reason. There was no discussion of the conditions of *entry* and membership of a political community, over and above contractarian notions of the tacit consent of visiting strangers and the like, nor was there any concern with the conditions of group solidarity *between* citizens. By contrast, republican discourse, even as it employed the language of natural law, recognised that citizenship was more than a legal status which an individual could simply step into. We recall that republican citizens made up bounded groups of individuals who banded together for mutual benefit. These benefits were recognised to require sacrifice and determination by all, and civic virtue in turn presupposed a sense of political friendship and mutuality, even among strangers, which could not be expected to arise by itself.

However, unlike most contemporary neo-Kantian liberals, and unlike earlier thinkers of the Enlightenment, nineteenth century liberals *were* indeed aware of the problem of solidarity. J.S. Mill, Hegel, Fichte, Humboldt, Mazzini, T.H. Green, and Sidgwick all explicitly presupposed the framework of the nation-state, and 'national' self-determination was a standard liberal commitment.⁴² In these authors, a constitutive liberal contradiction becomes apparent: The moral language of liberty and rights was considered in principle to be universal and neutral, whether derived from God's law, human reason, or general utility, but it could only *motivate* individuals who shared a cultural identity. In a large degree, as recently pointed out by Will Kymlicka, liberal writers of the last century were for instance beginning to recognise that national minorities did not, after all, enjoy a *de facto* equality of rights with majority populations, who were able to monopolise national cultures and institutions with their power of numbers.⁴³

The usual conclusion drawn by the nineteenth century authors consisted in liberal nationalist doctrines according to which states must be fitted to existing

42. For discussion and reference to these authors, see Kymlicka (1995:50ff).

43. Kymlicka (1995: 51-52).

'peoples'. But an aspect of this had to do, not only with legitimate and necessary cultural diversity of institutions, in particular religious and language related ones, but also with the conditions of solidarity and identification. These conclusions, in writers like J.S. Mill and Green, were significantly tied to the rediscovery of the need for civic activity to sustain free institutions, and of such activity as a main generator of civic virtue and identification with the common good.⁴⁴ However, in the idealist and liberal-humanist new use of the language of patriotism, identification was invariably linked, not only to the experience and remembrance of common liberty *per se* (although only liberal institutions deserved loyalty),⁴⁵ but to a shared cultural background.

Green added to his idealist rationalism the stress on "ties derived from ... traditions and customs, and from the common ways of feeling and thinking which a common language and still more a common literature embodies".⁴⁶ Mill, who considered the matter in some detail, thought that it was "in general a necessary condition of free institutions that the boundaries of government should coincide in the main with those of nationalities". By "nationalities", Mill had in mind groups united by "common sympathies" which could have a large range of different origins, including "race and descent", "[c]ommunity of language, and religion", and "[g]eographical limits". Important were also common "political antecedents" and a shared national history of pride or humiliations. But, by contrast to most of the older republican discourse, Mill did not recognise - perhaps for good reasons, in an age of nationalism and nationalist unrest - the normative potential of patriotism as an *integrating* and bridging form of solidarity:

44. Green doubted that

the legislative and administrative agencies of society can be kept free ... and true to the idea of common good without popular control - [and] whether again, if they can, that appreciation of common good ... which is as necessary to free or political society as the direction of law to the maintenance of common good, can be kept alive without active participation of the people in legislative functions (Green, *Lectures*, G, 119)

According to Mill,

[t]he food of feeling is action ... Let a person have nothing to do for his country, and he will not care for it (...) Where [the] school of public spirit does not exist, scarcely any sense is entertained that private persons ... owe any duty to society, except to obey the laws and submit to the government. There is no unselfish sentiment of identification with the public Representative institutions necessarily depend for permanence upon the readiness of the people to fight for them in the case of their being endangered. If too little valued for this, they seldom obtain a footing at all, and if they do, are almost sure to be overthrown (Mill, *Representative Government in Utilitarianism, On Liberty, and Considerations on Representative Government*, cpt.3-4 (pp.220,234,236)).

45. E.g., Green, 'Loyalty', *Principles* (p.306).

46. Green, cited in Kymlicka (1995:52).

Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist⁴⁷

Mill recognised the practical need to recognise state sovereignty in many cases where national groups had been previously subdued by 'superior' cultures (i.e., the British and the French), or where such groups were too dispersed and fragmented to be the basis of separate political entities. But by doing so, and by sticking to the language of nationalism, Mill came to partake in the nineteenth century project of what is now considered to be a distinctly un-liberal, forced assimilation - rather than the tolerance of cultural diversity which has become a main topic of contemporary liberal ideologies which rest safely on the foundation of established nation states. By implication, he also came to have a small share in the self-perpetuating construction of myths of naturalness of nations, and of the nation as the prime object of modern identification and belonging,⁴⁸ which spelled the death of the republican language of patriotism.⁴⁹

In light of these liberal ideas of the last century, the republican argument about solidarity and patriotism can be reconstructed to entail three claims. The second and third of these are also promises - ambiguous promises - which highlight, again, a constitutive element of tension or dialectic in republican thought - evident above all in Rousseau, in the American founders, and in Tocqueville's implicit criticism of Rousseau: Fragile liberty requires mechanisms of civic identification to support it, but the quality of this identification is not to be taken for granted.

The first claim is that boundaries are needed. It is a commonplace, and not an embarrassing afterthought, from Machiavelli to Tocqueville, that the propensity to solidarity is easily diluted, whether this means to live in justice with someone or something more demanding. This is not a moral question of 'particular' versus 'universal' obligations, but about the human capacity for abstraction. By and large, solidarity must be with people that a person is 'closer to' than the entire mankind, although exactly how close is an open question. Somehow, it must be with people with whom one shares, beyond some abstract conception of justice, some 'concrete' fate. Most basically, the very meaning of solidarity in republican discourse is paradigmatically linked to the idea of an historically and geographically bounded cooperative community of citizens protecting and furthering a particular common liberty project.

47. Mill, *Representative Government*, Chap. 16 (pp.391-92,394).

48. Classically Anderson (1983); Hobsbawm (1990). The basic point about nations as 'constructed' entities is not contested by theorists who place more stress on old ethnic backbones of nations (Smith 1991).

49. Viroli (1995).

The second claim is that civic cooperation, while always taking place within boundaries, may be a more or less *exclusive or inclusive* affair. As regards the first mechanism of civic remembrance, Roman republicanism expressly enabled people from the provinces to become citizens, regardless, for instance, of their religion. And the Machiavellian republic 'for increase' was legitimated not only on instrumental grounds, but because of the potential for more people to become citizens. American revolutionary patriotism was defined by a communality in defence of liberty which was inclusive in principle:

by 1776 ... the concept of 'patriot' and 'patriotism' were clearly affixed to a particular set of ideological, constitutional, and political principles: formation of a body politic, and to a distinctively *political*, public spirit that evolved from the experience of a shared struggle and self-sacrifice for a common cause⁵⁰

Dietz notes with regret that the concept has become associated with its bloody brother, nationalism, and claims that "maintaining a distinction between patriotism and nationalism is more than just a an exercise in semantics".⁵¹ Viroli even more unequivocally stresses how *patria*, from the Romans onwards, has referred to the republic which was able to secure a citizen's liberty, and how, correspondingly, the patriot was a citizen who showed a willingness to make sacrifices for the sake of this liberty and the laws securing it. Patriotism was the specific type of *love* of the citizen, which was later revived in Machiavelli's 'I love my native city more than my soul'. This republican *caritas cive* was not linked to a mystical homeland, as in the romantic nationalism of Herder and Schlegel:⁵²

the civil philosopher's city ... is grounded on justice, not on a particular concept of the good, a culture, or a tradition ... the republic is, as Cicero said, a congregation of men gathered to live in justice under law, and its aim is to protect the liberty of the citizens against the insolence of the ar-

50. Dietz (1989:183,187). Thus, Jefferson was able to "think it fortunate for the United States to have become the asylum for *so many virtuous patriots of different denominations*", Jefferson to M. de Meusnier, Jefferson, *Life and Writings* (p.533, italics added).

51. Dietz (1989:191).

52. Patriotism, according to Viroli who cites two famous writers, is indeed a form of compassion and care: "è piuttosto, come ha spiegato Simone Weil, una forme di compassione che si prova nei confronti di persone o di cose care di cui percepiamo la bellezza e la fragilità. Vale la pena di ricordare quanto scriveva Croce nel 1943: 'si potrebbe dire che corre tra amor di patria e nazionalismo la stessa differenza che c'è tra la gentilezza dell'amore umane per un'umana creatura e la bestiale libidine o la morbosa lussuria o l'egoistico capriccio" (Viroli 1993:463).

rogant ... Citizens regard the city (or should) as something to which their parents and grandparents contributed, and which they must preserve⁵³

This relationship is found even in Rousseau, and even in his *The Government of Poland*.⁵⁴ The love of *patria* which Rousseau wished to awaken must derive from an enjoyment of peace and liberty, and from an appreciation of their fragile character. Even when proposing to employ the standard paraphernalia of nationalism, Rousseau never departed from the premise that liberty is what must be secured. But while this part of Rousseau's work starts in the theoretical landscape of republican patriotism, it also provides early examples of *know-how* on nationalist mobilisation - in *whatever* cause. Rousseau, again, is a *locus classicus* of the dangers of the republican argument. Patriots may be motivated in the wrong manner, and the means employed to secure liberty, in the hands of ruthless propagandists, may quickly displace and obscure as a matter of fact if not conceptually the end of liberty.

Yet, a republican political identity, as noted by Smith, is to some extent malleable, because created. It may be thematised and criticised in manners that make its meaning broader and accessible to a wider range of individuals. Clearly, republicanism was ambiguous on these matters, and relatively silent, for good reasons, on issues of cultural identities. However, the American tradition along with Tocqueville's conception of reflective patriotism contains the building blocks for an idea of patriotism as based on the reconceptualisation, as an ongoing political concern, of the meaning and historical references of liberty, on guarding the republic against nationalistic and chauvinistic passions, and on attempting to include more and more different people into the mnemonic community, as the history of a republic unfolds and new groups contribute to it or become recognised as silenced or forgotten contributors of the past.

Also the idea of a forward-directed political integration through participation may have its dangers, although it does not involve (inventing) a common past. Everybody, regardless of creed and culture, can participate in defending the institutions of liberty. Accomplishing important things together creates potentially robust bonds, and there are many possible settings where this may take place in modern societies. Republican standard cases, we have seen, have been civic militias, local associations, and political deliberation. But also here republicanism has its dark side. Rousseau typifies a Spartan ideal where participation - for instance in connection with the 'spectacles' that he commended with such enthusiasm to D'Alembert - becomes a melting together of individual minds, where all completely forget their private selves, and all are constantly seen by everybody else. Individu-

53. Viroli (1992:288).

54. Viroli made this point with much energy in a talk at the European University Institute, Florence on 12 April, 1995.

als, here, identify themselves and others *exclusively* as citizens, and hence as all alike, rather than as private individuals with a shared civic identity. Each will be a brother to another, each will be able to suffer any sacrifice for the sake of all. What, one may plausibly ask in such a situation, will become of the capacity to see other individuals in their difference, with possibly different needs and diverging viewpoints?

Rousseau's theme of the Total Citizen as a vehicle for equality of recognition was in principle independent of his other, republican, employment of the argument. Still, many passages from the *Lettre a D'Alembert* seems to contradict the third claim about patriotism that we may reconstruct from the republican tradition: Patriotism always contains a rational core, and it does not involve a demand for unquestioning allegiance. Again, according to Viroli,

Every city is a particular one, with its distinctive qualities and its particular story ... [and] ... preserving our community is an indispensable condition if we are to understand our own story ... Patriotism has always been a value cherished by civil philosophers..[but] ... Our country has to deserve our sacrifice, if we are to serve it ... Our country has to be defended only if it is a just republic that protects the liberty of the citizens⁵⁵

There is no doubt that republican patriotism is conceptually linked to liberty in this way. But leaving it at that is too simple. The motivational mechanism involves a degree of departure from the conceptions of rationality common to most Enlightenment liberalism. First, the republican tradition, in focusing on the need to make the memory of liberty vivid and concrete, positively applauded the employment of rhetorical and narrative means in public discourse. Republican citizens, remembering liberty with their heads, must also be moved in their hearts, even be impressed by the beauty and the pathos of their present political existence as well as their past. This, of course, is in stark contrast to the 'unimaginative', philosophical, and technical language of contemporary liberal political theory which, despite the virtues of using such language in scholarly circumstances, fails to catch the public imagination. Historically, writers like Hume and Constant unfairly presented republican patriotism as a *blind* passion. Yet, the widespread Enlightenment turn towards cool and calculated interest and reason did mark a departure, and possibly a premature one, from the republican universe of political psychology.

Secondly, there is also a sense in which patriotic identification motivates because it becomes *a value in itself*. The section below is an excursion from the juxtaposition of republicanism to 'liberalism', which otherwise structures this chapter. However, because of the very illuminating manner in which, to my mind, he mis-

55. Viroli (1992:288-89).

reads the republican idea of patriotism. Taylor's influential contribution merits further attention.

5.1. Taylor: A Cross-Purpose Regarding 'Patriotism'

Taylor's argument, in the article, *Cross-purposes: The Liberal-Communitarian Debate*, was that patriotism as an identificatory device serves to motivate citizens to duties beyond the most ordinary, because the historical community is a common good in an *immediate* sense. Confirming oneself as sharing this identity, belonging to this community, and sharing bonds of solidarity with these people is valuable in itself. It is the sharing as such which is valuable and which compels, as distinct from what is going on in the case of what he calls the merely *convergent* common goods. Political communities must take care that institutions are fashioned properly, so as to reflect these shared values and hence mobilise patriotic feeling:

Taylor argues that,

The identification of the citizen with the republic as a common enterprise is essentially the recognition of a common good. My attachment to the MUC [Montreal Urban Community] for its police service is based on enlightened self-interest. My (frequently inoperative) moral commitment to the welfare of all humans is altruistic. But the bond of solidarity with my compatriots in a functioning republic is based on a sense of shared fate, where the sharing itself is of value. This is what gives this bond its special importance, what makes my ties with these people and to this enterprise peculiarly binding

The latter type of attachment is lacking in nominally liberal regimes where the public tolerates power abuse. Even though a few people "feel very strongly about the fate of democracy everywhere" they will never make the crucial difference, nor may a liberal regime rely on its fair weather friends who will not show up before and unless the state delivers the goods.⁵⁶

Now, Taylor associates this argument about motivation with what he calls the "republican thesis". He goes on to argue that this involves that "a free society requires a patriotism", and patriotism is "a common identification with an historical community founded on certain values". But as we look closer at Taylor's contentions, we see that his points are communitarian rather than republican: Republican patriotism is about Aristotelian self-government (although his unsupported references are to Machiavelli, Montesquieu, and Tocqueville), where the creation of a community consensus allows citizens a "common expression of [their] respective dignity", even an "extension of themselves". Moreover, there are many types of patriotism, including fascist ones and some "founded on race and blood ties", and the question becomes one of "defining a meaningful freedom which can capture peo-

ple's allegiance". Republican patriotism, Taylor thinks, fits Canada better than USA, the latter's freedom being based on rights and procedurally neutral institutions. And, more particularly, in some societies, like Quebec, the value of institutions, as they reflect citizens' freedom and dignity, implies not just self-rule, but also an embodiment of "a national culture ... which is also defined in terms of some language or history". In Quebec, patriotism is only fostered through dedication "to the defence of French culture and language, even if this involves some restriction on individual freedom."⁵⁷

The instrumental element in Taylor's conception of patriotism turns out to be rather weak. It cuts the conceptual link with *libertas*, referring in stead to different meaningful 'liberties' in different countries, using 'liberty' in a very broad sense, related to collective autonomy as well as cultural expression. He also fails to see that republican identification does not necessarily rely on already *prevailing* traits of political culture, let alone 'culture' as such. Although he does not spell it out, nor attend to some of the drastic conclusions that might follow, the content of a given 'culture' becomes normatively privileged as the embodiment, *pace* Taylor's rather strong version of "holism",⁵⁸ of what is already there. Hence, the commemoration of the American Revolution and Declaration of Independence are treated as parallel 'constitutive values' to language in Canada.

In the Taylor logic, once political institutions reflect stable and 'given' cultures, political allegiance - of the sort that fits the cultures in question - will in fact be forthcoming. The instrumental problem, as presented by Taylor, is to secure the right fit, as it were. He ignores the republican experience that patriotism is exactly what cannot be taken for granted, and needs to be mobilised, created, or directed. In particular, he treats civic activity (apart from being a means of self-expression) as a generator of patriotism *only* for those peoples, including Canadians and in particular the Quebecois who have such participation as a part of their tradition, *contra* the republican point that it is a *general* means to create patriotism where none was before, or to recreate it where it has been lost. Again, the republican point is not to express an identity, but rather to construct or reconstruct it.⁵⁹

But let us abstract from all these misunderstandings and look at Taylor's idea of *immediate* common goods, the value in itself of sharing a citizen identity, which is a state of affairs, according to Taylor, that may be likened to playing an instru-

56. Taylor (1989:170).

57. Taylor (1989:173,178,181-82). Taylor's writings, philosophical and polemical, on the Quebec question, are collected in Taylor (1993).

58. Taylor (1985).

59. Taylor, in a later book (1991:118) seems to come closer to the republican argument, suggesting that "[s]uccessful common action can bring a sense of empowerment and also strengthen identification with the political community". Still, Canada, with its more decentralized federal system, stands a better chance here than the USA.

ment in an orchestra. He clearly has a point here. The republican idea is not *only* that we must cooperate with others in order to realise personal benefits we could not have alone, and that such benefits also, incidentally, accrue to others who participate in the enterprise. Nor is liberty *only* a common good in the moral sense of a collective arrangement which a group may regard as *reasonable*. The moral obligation refers to a bounded group of individuals, and to the community as a whole as represented in its laws and institutions. Here, 'the sharing itself' may be of value because the activities involved become ways of confirming to oneself in an important way (though not necessarily the only nor the most important way) who one is, by identifying with the group where the sharing is done, and with the political values of this group.

This is, indeed, a sentiment in citizens which goes beyond the rational, both the merely self-interested, and the merely moral, and expresses an emotional attachment to something particular, both a particular political entity and particular individuals with whom one shares citizenship. The problem with Taylor's account is that it distorts the rational core of the 'immediate' common good as it is employed within a language of identity and belonging. The republican argument suggests that rational interest, let alone duty, cannot be had in mind constantly. But how ever unreflectively any one citizen may 'share' or 'belong', and derive intrinsic satisfaction from it, the *meaning* of the 'immediate' common good will still derive from historical experiences of liberty as being the result of cooperative undertakings. Such experiences are at least in principle accessible to, if no longer personal remembrance, then the re-minding which takes as point of departure the great value of a person's present and actually experienced liberty, and, often, some plausible story of the relationship between these benefits and the history of how it was secured, threatened, or renewed in the past.

The reason why participating in a project or sharing certain political memories of liberty may become valuable in itself, is that both activities are bound up with ideals about what constitutes a good citizen. It makes sense to see such ideals as the core of a political way of life, also when it does indeed become a - more habitual - way of life. They become reasons which everybody will or should be able to give, even as an independent value becomes attached to the company of others in action, or to the comforts of sharing in a common history and future. The motivational force of the republican common good is a 'passion' with a rational content and origin. Belonging and participating are of value because they presuppose ideals which citizens could at least be able to state and understand.

It is in this way that Viroli is right that patriotism can never be *unquestioning*. Nor could it be the case, as some communitarians would argue, that refraining from questioning, or experiencing the impossibility of questioning, is what constitutes a common good. There can be no 'my country right or wrong'. Being a citizen, someone who partakes in an important historical enterprise with others, may be a

great good, a source of pride, a measuring rod for praise and esteem, and a very important base of mutual recognition. But all this may, indeed should, break down, if the enterprise is no longer concerned with liberty, if the republic falls into decay. There may be such a thing as a human need for areas of psycho-ontological security, of knowing that certain things can always be trusted to be in a certain way. But at the very heart of the republican idea is just the opposite notion, that there is no such thing as the certainty that liberty will last.⁶⁰

If, returning to Rousseau's bold reflections offered in the letter to D'Alembert, some republicans have relied too much on the 'value in itself' of being recognised as belonging, this only serves to highlight, as a last republican tension, that civic activity may generate more or less reflective and critical patriotisms. We have good historical reasons to doubt that individuals treated with Rousseau's medicine could remain open to newcomers and strangers (Rousseau did not think they could, and did not care much), or even distinguish between the institutions securing their liberty and those required by and orchestrated for the sake of the nation. But the republican intuition here would not be to let sleeping dogs lie and identities and national feelings be, sticking to cosmopolitan high ground. Rather, it would be to insist that there is no other way to avoid chauvinism than to have forms and institutions of participation and collective remembrance that are linked as much as possible to critical reflection on the sources and meaning of a political community's shared past and future.

6. On Republicanism and Liberalism - Again

These, I submit, are the most important contents of the rich republican tradition of political thought, highlighted with the analytical searchlight that I have called the fragility of liberty. I shall end this chapter with a few remarks on what I see as the distinct contribution of republicanism as an historical tradition.

6.1. *Ancients and Moderns - New and Old Republicanisms*

I have tried, throughout this thesis to emphasise the continuity of the republican argument. Thus, to repeat, I believe to have established that republican theory

60. Psychologically speaking, the republican idea suggests an analogy to friendship, as we normally understand it (i.e., not Aristotle's *philia*) as opposed to the blood relationships in a family, otherwise suggested by the concept of *patria*. A parent does not put in question what is the basis of his or her love of a child. If the child commits a terrible crime or act of betrayal, it makes good sense to us if the parent says 'she is still my child', and forgives him. In a friendship we do know that an easy way to ruin it is to start keeping accounts or analyse feelings. It is certainly unpleasant to place its value and the merits of the friend in question. Yet, it is not at all impossible, and there may be moments, such as, for instance, great breaches of trust, that may eventually cause a person to ask himself what in a relationship (what has been experienced in common, what are the relations of gratitude etc.) could possibly motivate him to continue to forgive and forget.

from ancient Greece to modern America conceptualised a species of negative liberty, that civic activity was not, in the senses usually attributed to the 'civic humanist' tradition, values 'in it self, and that civic virtue, whatever its content and flavour, was an instrumental matter.

Clearly, historical shifts occurred, as the language of virtue and corruption travelled from the Italian renaissance to France, Britain, and the American colonies, and as good citizenship became embodied in new religious, social, and entrepreneurial contexts. Even so, I have also suggested that the usual contrast between 'classical' and 'modern' republican virtues and corresponding conceptions of the person are somewhat overdrawn. In particular, they thrive, today as in the Enlightenment, on distorted images of the classical world and its theoretical representations. Looked at more closely, neither Aristotle, Thucydides, Cicero, nor Machiavelli based their theories on the existence of such selfless, and selflessly sacrificing citizens which populated Montesquieu's *Persian Letters* and Rousseau's imaginary Poland, and which served as theoretical straw men for Madison, Hume, and Adams. Moderation, although its flavour was different, was also a 'classical' value.

This said, the unfocussed use of republican discourse as a repository of ideas claimed to have contemporary relevance makes it an important task to show that some republican writings are quite unattractive. The negative liberty advocated by early republicans was at times a circumscribed and limited protection of the most basic human interests in life and security, which reflected the grim social realities of their contemporary societies.⁶¹ At times, the means considered necessary to secure such liberty - strict social control, Spartan frugality, social engineering of devotion to the Fatherland - seem to have been such a strong medicine that the patient, common liberty, would be killed or left to lead a crippled existence. Yet, the temptation to celebrate these means and their consequences as dignified values in themselves, i.e., the spectre of Rousseau's armed peasant, is occasionally found in authors as liberal minded as Montesquieu.

A shift which does occur, and which arguably justifies using the term 'liberal republicanism', has already been noted. It is the part of the Enlightenment conception of *moderation* which is associated with the general shift towards a more abstract, impersonal, and pluralist conception of civil society. However, the transmission between such 'modern' and remaining 'premodern' political and social cosmologies does not correspond to the decline of republicanism. Inside the old political view of the world, with its static, natural hierarchies and social division, republican arguments (i.e., by American Anti-Federalists) were countered by conservative, aristocratic conceptions of the common good (as that of Adams). On the other hand, those 'modern' writers who analysed the new reality of social pluralism, individualism, and egoism included Tocqueville and Ferguson, along with Madison and

61. Brucker (1971)

Hume. Abstract, individualist, pluralist, and commercial society became the fertile soil for influential new (i.e., liberal, utilitarian, and libertarian) individualisms. But I have also tried to demonstrate that the same social realities were the occasion for renewed formulations of the fragility of liberty argument, now aimed at new, distinctly modern dangers to the republic.

6.2. *Virtues of Involvement and Virtues of Distance*

Throughout the historical analysis of this thesis I have tried to resist the temptation to erect liberal straw men. Locke, Hume, Kant, and Mill all treasured the same rock-bottom political value of liberty under law as did republican writers, although each of course added his own flavour to it. Possessive individualists and libertarians were late comers, not theoretical founding fathers. Although we have noted a tendency, prominent since the Enlightenment, to naturalise or rationalise the political condition in cosmologies of progress, many liberal authors continued to share the republican assumption that liberty was contingent and unobvious. In relation to these authors, the really significant difference, also for contemporary political analysis, concerned the proper response to such a state of affairs:

We should not allow the elaborate development above of analytical dimensions and contrasts, with their obvious ambiguities and contrasts, to make us miss the forest for the trees. A suitable shorthand contrast which cuts through reservations, exceptions, and refined distinctions, between historical republican intuitions and their rising non-republican or anti-republican opponents, based on what we may see as contrasting sociologies of citizenship and liberty, is between *the virtues of involvement* and *the virtues of distance*.⁶²

The republican impulse has always been to stress the need for civic intervention and political activity. The very existence of the political artifice; the existence and quality of political 'space', including dispositions to civic virtue itself; optimum working solutions to constitutional disputes and their continuous deliberative legitimisation; patriotism and solidarity as reflectively generated public commemoration and active identification - all these modalities of fragile liberty presupposed activity and involvement from citizens, and did so through changing ideological environments and discursive frameworks.

By contrast, the working understanding of 'liberals' (see Introduction) has been based on a negatively defined amalgam of quite diverse writers who in each their way, more or less intentionally, disputed elements of those republican arguments to whose existence this thesis has drawn attention. Such 'liberal' writers who really challenged the tradition would stress how, in order to achieve the same outcomes, republican remedies were part of the problem, not the solution, and that liberty was best secured by nurturing more passive, detached, elsewhere-occupied citi-

62. I owe the suggestion of this conceptual pair to Jørgen Poulsen.

zens, and corresponding social and political forms. Outlets for virtuous civic conduct - including forms of conduct which were conceptualised as socially beneficial and essential for the wider community - were increasingly unpolitical or extrapolitical in their content, as concerned with private, economic, or associational dealings. Or, to the extent that citizens did apply themselves to matters political, mechanisms and incentive structures had to be invented which channelled the disruptive and dangerous egoism or passion of such involvement to socially useful ends.

The self-consciously 'anti-classical' discourse of the Enlightenment was centrally defined by its wish to transcend what it presented as the close-knit, restrictive, homogeneous, normatively one-dimensional society of earlier human history. Modern liberty, they (rightly) claimed, had to be invented and embedded, institutionally as well as culturally, in societies of increasing social, economic, and religious diversity and distance, where people did not and could not know each other personally, and where conflicts and their resolution had to be increasingly routinised and mediated by impersonal rules and norms. Virtues, in such a society, were either the personal traits of character, suitable for one's immediate social circles, religious life, or sphere of family intimacy. Or they were procedural, legalistic virtues, suitable, for instance, for the impersonal transactions of the realm of business. However, we saw, particularly in the work of Tocqueville, that republican discourse was still capable of generating accounts of such virtues of political involvements which were required, also, indeed particularly, in such increasingly abstract and impersonal societies.

In the Introduction I noted that the difference between republicanism and 'liberalism' is most fruitfully seen as an entire set of ways that *arguments* were forwarded against republican views on each of the four dimensions - but not necessarily on all dimensions at the same time, and thus leaving us a range of *authors* who may be classed as either-or, or both-and. I do not see this as a problem, indeed I have made much of the fact that republicanism does not have to be seen (indeed that it leads us into problems if we insist on seeing it) as a subject-constitutive mindset, a package deal to which you either do or do not subscribe. The very internal diversity of republican arguments partaking in the common intuition of *the fragility of liberty* makes this easier to appreciate. Because republicanism was a set of only loosely converging, historically changing, and conceptually flexible arguments which referred to real political experience in changing contexts, it makes sense to see authors sampling, combining, or selectively giving up such arguments according to changing perceptions of degrees and ways in which civic-ness was seen as called for.

These arguments, we saw, were restated - sometimes strengthened and sometimes modified or given a less prominent place - inside different conceptual universes, none of these in turn to be seen as closed, determinate, or constraining to the degree assumed by either conceptual history or discourse analysis. But inside each of these languages - some of which were developed in Chapter 4 - it is also

possible (again, at the level of arguments rather than authors) to locate a diversity of terminal points of republicanism. Using the four dimensions of *the fragility of liberty* as my framework, I have explained and exemplified – pointing out what in *these contexts* at least were non-republican, anti-republican, or 'liberal' authors – where these republican ideas came to rest. To repeat some of the most important of these points of discontinuity – there are more – they include Hobbes' refusal to accept (against Harrington) the very idea of liberty under law, let alone any notion that citizens might be trusted or trust each other to defend it; Mandeville's, Hume's, and Hamilton's celebration of luxury and unbridled commerce as ways to cool passions or direct them to less dangerous pursuits – in denial of Jefferson's, Ferguson's and (later) Tocqueville's ideas that even an unruly virtue was better than apathy, or their notions that also 'polite' interaction and manners could take on (moderate) political forms; Hume's and much later writers' presumption that a *political science* of institutional checks and balances, or a properly designed and 'pluralist' *enlarged sphere* of mutually countervailing passions and interests could be counted on to secure liberty (and that 'virtue' was not just an unrealistic solution, but a part of the problem); the ambition – be it that of Locke or Kant (or Rawls) – to derive a finite conception of *Recht* outside politics, or the later utilitarian idea of doing so by the means of utilitarian calculus; the notion of late *laissez faire* that individuals are so much owners of their own persons that any idea of obligation to a political community is illegitimate (and the forgetfulness by the same group that the 'natural' rights of acquisition, transfer, and contract presuppose the contingent existence of such a community in the first place); the optimistic *moral psychologies* which assume that (sufficient degrees of) virtue, benevolence, or public spirit may be expected to develop as a matter of innate moral sense (Hutcheson) or corporate integration (Hegel); the ideas of most Eighteenth century liberalism (Mill, Green, Hobhouse) that patriotism, in order to work, requires the backup of cultural homogeneity (let alone the *nationalist* 'pollution' of patriotism and departure from common liberty); and such determinist (materialist or idealist) varieties of progress theory which completely deny that *particularity of time* which is at the heart of the fragility of liberty (Condorcet, Hegel, Turgot).

6.3. The Price of Liberty

The diversity of republican creeds, in terms of their degree of theoretical and historical distance from those tenets of modern liberalism which make up a liberty 'fit for moderns', is plainly obvious, as noted above. Indeed, in view of the unfocussed use of republican discourse as a repository of ideas which are lauded for their unqualified contemporary relevance, it is a task of some importance to remind each other that some republican writings and arguments were quite unattractive. However, apart from this diversity and apart from the need to admit that few republicanism were liberal enough to a modern eye – as were, in fact, few historical liber-

alisms - a more disturbing, principled point needs to be made. While some republicanism was more palatable than others - this author rather likes the writings of Tocqueville - the tradition as a whole exhibits a series of illuminating *constitutive tensions* in the fragility of liberty argument.

These tensions are indeed *constitutive*. The significance of contemplating the internal diversity of the republican tradition, including its less palatable, illiberal formulations, is not merely to be able to stick with the few good guys and dismiss the bad, illiberal ones. Rather, viewed in its entirety, the republican tradition may oblige us to face the most difficult level of the problem of fragility of liberty. Liberty, it seems, always requires sacrifices, always comes at a price. It does so, of course, in the familiar sense of the necessary collective efforts in the service of liberty. However, the republican discourse of liberty is also defined by its preoccupation with the fact that liberty must be realised in an imperfect world by imperfect men, and that *libertas* has a set of causal, circumstantial preconditions for its existence which inevitably, to *some* degree, involves aberrations from the ideal itself.

Thus, the republican tradition urges us to reconsider the contingent existence of political communities in time. The enjoyment of liberty presupposes acts of liberation, i.e., the more or (often) less civilised foundation of *libertas* and the republic. It is an open matter how much and which type of civic activity which is needed to protect the *artifice*; the historically necessary and realistic balance between the enjoyment of a private life and the demands of political activity cannot be stipulated in theory. Nor can the question of which mechanisms are required in order to make citizens perform their collectively rational duty. The tradition highlights the non-obviousness of both private and public virtue and of the propensity to respect, realise, and further common liberty as an ongoing concern of a public culture. It also thematises the corresponding tension between social space as dominated by social control and shaming, and by reflectivity, impartiality, and tolerance. Republicanism treats as fundamental the normative and political contingency of any constitutional order. In particular, it highlights the tension between rational argument on the one hand and political bargaining and compromise on the other; and the tension between the authority of constitutionalism and the contingencies of the necessary ongoing public legitimisation and contestation of the political order. Finally, in accepting the constitutive nature of partial and bounded political solidarity and civic identification, it raises thorny questions such as how much common identification a political community of liberty needs to survive and prosper, and how public *remembrance* and civic cooperation may be given more or less reflective, flexible, and unsinister forms, so as to tip the balance between exclusion and liberty as much as possible in the direction of the latter.

6.4. A Challenge to Liberalism

Republicanism, I have argued, continued as a challenge to liberal – or 'liberal' – political theories which developed throughout the Enlightenment, even as republican arguments had to be reframed under new circumstances, and even as the discourse accommodated itself to new ideas and master concepts such as natural rights and commercial society. The challenge to *contemporary* liberal political theory – a challenge about which I shall say a little more in the conclusion – is first of all to start to take the republican tradition seriously. The first step towards doing so is to resist the misrepresentations of the doctrine which started with Hobbes and accelerated through the Enlightenment, only to be perpetuated by contemporary participants to the communitarian project as well as by their critics.

The second step is to face historical republicanism as a vast reservoir of *empirical challenges to liberalism*. I have in mind the point, alluded to in the introduction, that all value systems and normative theories of politics must rely on basic causal generalisations and assumptions – which are not always clearly stated – about such matters as human nature, the mechanisms of human motivation, the sources and nature of social conflict and its possible resolution, and the forms and sources of civic solidarity. This is also true of different liberal theories. Several important liberal principles, specifically ideas of obligation and state neutrality between forms of life, depend on such empirical assumptions. Obviously, assumptions of this meta-theoretical or 'paradigmatic' order are not easily falsified – and trying to do so may be as much a theoretical task as an empirical one. Thus the argument about the fragility of liberty may be reconstructed as a sustained and multifaceted *contestation* of competing, more or less considered liberal assumptions about the conditions of liberty. Moreover, such republican contestations of historical liberalisms correspond in several ways to conclusions drawn from the recent liberal-communitarian debate, which were noted in the Introduction.

Republican contestations as summarised in this chapter take these points further. They present a comprehensive set of *doubts* about standard liberal assumptions – about progress, moral development, pacifying commerce, institutional architecture, and solidarity. They point out, by implication, how such assumptions shelter liberal theory from realising or having to remember the thoroughly artificial and non-obvious existence of its most treasured institutions and character traits. They remind contemporary liberals that the case for civic activity, and the further implications of such a case, may be linked to a rather more robust set of arguments than what these liberals have encountered in communitarian or participatory democratic agonising about the lack of authenticity or moral integration in modern politics. Liberalism, seen from a republican point of view, is clearly a thinly and unevenly spread, recent, and reversible Western experience (exported with various degrees of success to a few other places). Liberal institutions do not maintain themselves. Liberal states do not represent a natural order of things, nor does.

certainly, a minimally inclusive and secure citizenship. And an 'overlapping consensus' on a reasonably civilised form of such citizenship is an altogether contingent affair. Instead, republican contestations suggest the hypotheses, outlined under the four headings above, that the contingencies of a liberal order must be addressed by thematising the existence of, and the potential for, civic activity, public vigilance and public reflection.

Exactly *what* is the right quality and kind of such civic virtue in modern societies is far from obvious, in light of the constitutive tensions of the republican argument. Civic activity, to take an obvious example, was shown to consist of both reflective impartiality and maintenance of social control, belonging, and boundaries. The extent of the difficulty is signalled by the fact that, in order to cater for both concerns, contemporary liberalism is called upon *both* to refrain from 'staying on the surface' *and* to accommodate itself to the limits of its own reflective-universalist moral psychology.

More generally, the notion that we must put our faith in a more civic and active society is far from uncontroversial. Much of the 'political participation' that the world sees is not very civic, patriotic sentiments often shade into chauvinism, and public space is a battleground for the exchange of *Feindbildern* and thinly veiled abuses of the language of the common good, as often as earnest deliberation and tolerance. The difference between republicanism and much participatory communitarianism is that the former, although this is often overlooked, is itself intensely preoccupied with the *problem* of securing the right forms of participation.

It is not the purpose of this thesis to formulate anything like a general republican theory of politics. The four dimensions of the fragility of liberty argument point in many directions, and following each systematically would require many volumes, carrying such names as 'revolution', 'constitutionalism', 'tolerance', 'trust', and 'solidarity'. The claim is not that contemporary liberal theory should accept any particular orchestration of these tensions or any particular version of the fragility of liberty argument; only that it ought to integrate a concern with the existence of such arguments. The historical demonstration of evolving fault lines between republican and 'liberal' discourse is quite distinct from an argument about which of these differences are such as should *matter* to contemporary liberal theory. Apart from the fact that much old republican theory was both normatively unsavoury and theoretically crude, there is no doubt that some of the causal counter claims of liberal Enlightenment theorists had great merit. However, I suggest that a properly defended, politically relevant liberalism needs to take its own fragility seriously by attending to the preconditions of its own realisation as a stable and working community of common liberty.

Clearly, not all political theorists who consider themselves liberal (as does this author) are equally vulnerable to a reconstructed republican critique, or at least not to all of its elements. Indeed, the concern with matters such as cultural plural-

ism, political deliberation, nationalism, federalism and forms of democracy are part of a way of doing political theory which takes 'stability' and 'feasibility' seriously, and which has always existed alongside more strictly philosophical enquiry. However, some liberal political theorists of a more neo-Kantian, analytical and constructivist mould, who I believe *ought* to be concerned, will dismiss the new republican revisionism (as has Rawls himself) as a *mere* empirical argument that may or may not be attached to ideal theory. Republican thought helps place such endeavours in a certain perspective. In the Conclusion I say a little about *this* claim, and about the *kinds* of theoretical challenges a reformulated republicanism might pose to those who forward it.

CHAPTER 9: CONCLUSION

In this thesis my aim has been to contribute towards the reconstruction of our understanding of republican citizenship. I have traced a republican tradition of political thought in the history of ideas, and argued that a suitable way to do so is to use the analytical searchlight of the *fragility of liberty*. While the reconstruction, systematisation, and conceptual analysis of this tradition has been my main focus, I have also sought to explicate in what manners republicanism is different from liberalism, and different in important ways. I have done so while stressing that such 'liberalism', historically speaking, should be seen as a shorthand for a variety of rather different doctrines which challenged republican arguments in various ways. As regards contemporary political theory, it is my impression that the so-called liberal-communitarian debate was 'won' by the liberal side, that there is very limited shared ground between the republican arguments and values that I have reconstructed and most communitarian writings, but finally also that the same debate may be seen to highlight - as briefly developed in the Introduction - a theoretical impasse which liberals should confront by taking *republican* arguments seriously (to start with by distinguishing them from communitarian ones). The liberal theory I have in mind (although I have made no serious attempt in the thesis to distinguish inside this tradition or to substantiate my criticism in detail) is primarily analytical neo-Kantian egalitarianism of a Rawlsian bent, but also other types of theory, right-liberal libertarianism not least.

Throughout the historical reconstruction, I have made a point of showing that republicanism as a tradition was concerned with an *empirical* and *causal* argument - or rather a set of arguments - about the fragility of liberty. Moreover, as anticipated in the Introduction, I have been guided by the belief that these empirical and causal arguments - lifted out of their context, sampled, and theoretically developed to be sure - might still have some relevance today. To demonstrate this has not been attempted at all. However, in the Introduction a number of areas were highlighted where, at the very least, a liberal onward march of history was not in evidence, and where liberty was still 'fragile'. I believe, and shall say a few words more about this below, that promising research question and hypotheses *do* indeed arise, and that several areas of empirical contestation of contemporary republican programs are likely to be found. Moreover, the question of *whether* such empirical and causal purchase of republican arguments may be found is, I believe, highly important for contemporary political theory, as is more particularly the question of *in what way* 'normative' theory is or should be affected by such empirical and causal considerations.

In what follows I leave the history of ideas to take some tentative steps into these matters. First I offer a few closing remarks on what seems to be the most im-

portant findings and perspectives of the thesis, by way of discussing the very point of reconstructing a republican tradition and what has been my own contribution in this regard. After this I say a little about the character of the empirical and causal claims that 'a republican perspective' facilitates or suggests in a contemporary perspective. Thirdly, I look at *the nature of the challenge* to liberal political theory which seems to follow from republican argument, both from the various aspects of its empirical and causal claims, *providing these claims are relevant*, and from the very fact that these claims are indeed ('merely?') empirical and causal.

1. The Importance of Republican Reconstruction

Taking the republican tradition seriously is important. First of all, it is important for political theory. Of course, an argument in political theory should not stand or fall according to whether it has a distinguished past. Nevertheless, history of ideas *does* give authority to theory, if in indirect ways. Certain interpretations of republicanism have been used, as it were, to try to give advocates of liberal theory a bad conscience. Thus liberalism has been blamed for repressing (theories and traditions of) an intrinsic meaningfulness of politics, for crowding out a pre-liberal communal life without selfishness and moral atomism. Such charges, to some extent at least, have been strengthened by their reference to influential readings of historical texts. On the other hand, liberal theory has also been *de facto* sheltered by the misrepresentation of republican arguments. Certain theoretical lacunae and unquestioned assumptions of contemporary liberalism may, in some degree, be a result of the failure to preserve the instrumental republican trail of ideas.

However, if history of ideas is important for political theory, previous work on republicanism has been inadequate in several respects. I have noted already the extent to which this thesis is indebted to the work of Quentin Skinner and Maurizio Viroli for the very idea of its conception, and for the core intuition of the fragility of liberty argument. Skinner and Viroli, along with a number of other historians of ideas have started a large revision of that grand project of *republican revisionism* which was undertaken by J.G.A. Pocock and his many followers. I identify myself with what I see as the 'post-Pocockian' moment of the former. However, I also believe work needs to be done inside this new project.

What I try to add as my modest contribution to the impressive work of Skinner and Viroli is this: I present a concisely reconstructed republican history which is more concerned with criteria of originality, variety, and thus substantial relevance for contemporary purposes. It is somewhat less concerned with the tracing of influences and ideological impacts. To present the very variety of republican arguments, and the changing contexts inside which the fragility of liberty presented itself with radically different problem scenarios - from the city state to American federalism - has been a main purpose of my work. Adopting such a focus corresponds to a certain way of *doing* history of ideas, defined by its purpose, and linked to crucial

modifications of the exclusive methodological focus on conceptual change and discourse found in the work of Skinner and Pocock. I have alluded to Berlin's ambition to emphasise what makes ideas, appreciated in their plural historical contexts, important to us - adding the thought that republican diversities are not only a question of those universes of human value and normative argument which Berlin wished to recover, but primarily about repositories of empirical and causal claims, and that different aspects of the tradition also in this respect may be lifted out of context. In this connection, also unlike either Skinner or Viroli, I have attempted to systematise republican arguments - putting them together in an unhistorical way - to yield four manageable dimensions. Individually, these are containers of many different arguments, deriving from their historically specific inventions and histories. Between them they are reasonably distinct (analytically, certainly not in terms of the empirical social and political forms to which they refer), and serve as useful short hand references to republican thought. To my knowledge, no work has so far been done which simultaneously traces, let alone systematises, *all* of the, as it turns out quite varied, elements that relate to the basic argument that was laid out by Skinner and Viroli.

Thus, my historical reconstruction of republican argument has attempted to do two things at the same time that are in potential conflict. First, it has sought to establish an intuitively clear way to understand republicanism as *importantly different*, a separate field of argument to take seriously. Secondly, I have wished to preserve the appreciation of the immense *internal diversity* of republicanism. Just as serious theorists will wish to ask 'which liberalism?' (Kantian deductions, utilitarian calculus, or Lockean state of nature theory?). I hope to have shown the possibility and fruitfulness of also asking 'which republicanism?', while having a shared idea of what justifies the generic term. Moreover, I hope that this is possible even as it is recognised that also my particular delineation of the republican *tradition* is of course contestable.

I also trace in a more systematic fashion, both in connection with individual authors and in the analytical reconstruction, the nature of the fault lines between republican and liberal traditions. In doing so, I try to avoid (too) simple juxtapositions, which thrive on the erection of not just republican, but also liberal straw men. A part of this task is about remembering the diversity of liberalism. The Pocock tradition of republican historiography had a peculiarly biased view of liberalism as a doctrine obsessed with individual rights and possessive individualism. In this context also Quentin Skinner makes some of his points about republican liberty against an idea of liberalism which is much too narrowly understood as a state of nature doctrine which posits the individual as free and *without* any obligations, and which even reads such a view into contemporary neo-Kantian liberalism.¹

1. I return to the latter point below.

I also criticise the view of Pettit, which Skinner seems to support to some extent, that the very concept of negative liberty in liberalism (liberty of the heath, Hobbes' 'silence of law') is different from the republican concept of negative liberty (liberty of the city, liberty *by* law). The problem with Pettit's otherwise important contribution - including its other elements - already suggests itself with the fact that liberals such as Locke, Hume, and Kant had distinctly law-centred concepts of liberty. Pettit's eventual way out of this problem, to restrict the term liberalism to late utilitarian and *laissez-faire* ideology, fails to distinguish between distinct causal narratives of how liberty is secured. Moreover, *my* searchlight - 'fragility' rather than Pettit's 'resilience' - is also the one of the two that reflects the most important dimensions of ideological dispute, those that took place during the age of Enlightenment rather than at the height of the industrial revolution.

I try to remedy the defects of these and other, to my mind misleading, conceptual and theoretical polarities. In doing so, I also question a tendency to view the contrast in terms of the simple presence or non-presence of specific discursive elements, such as 'natural rights' or 'commerce'. Sidney and Jefferson, to recall an example, in different ways assumed natural and 'inalienable' rights of man, along with an inherent capacity for reason, to be divinely bestowed. The difference to Locke, who thought the same, was the *fusion* of natural law, state of nature theory, and consent to a political language of struggle and revolution, in which democratic government was a means to *install* and *protect*, but also to *specify* through deliberation the temporal form of God's remote intentions, combining the values and aspirations of the living with the institutional and legal imagination of which they were capable. Also, although early republicanism was obsessed with the corruptive effects of commerce, republican language was perfectly capable of eventually encompassing or at least accommodating the value of trade and capitalist accumulation as part of the fruits of *libertas*. Similarly, despite the martial and Spartan flavour of virtue in Machiavelli and Rousseau, all through the American constitutional debate, and in the work of Tocqueville, it was possible to argue, while staying inside the republican framework, that, so to speak, both market man, democratic man, private man, and religious man could generate capacities to, and find channels for, the exercise of a virtue that was civic in nature. The discursive flavour of virtue changed, in particular in the sense of becoming more diversified. But the structure of the arguments about virtue as necessary for liberty remained remarkably constant.

Indeed, I have radicalised the republican revision of Skinner and Viroli by demonstrating that the fragility of liberty was already present in ancient Greek writers, and that the influence or even the existence of a separate 'Aristotelian' discourse of politics entirely for its own sake has been exaggerated in the literature. Although *libertas* was associated with, filled with as it were, a specific perfectionist ontology of human value, a political language was also already in use which linked the en-

joyment of personal security and legal status with civic activity and with a set of dispositions and character traits that were quite recognisable to the moderns.

The flavour of virtue, again, certainly changed. In particular, the political recognition of the value of religious toleration, social diversity, and politeness of manners, fit for an abstract, complicated, and rights-regulated society, also brought with it changes in the language with which civic virtue was represented. But I have resisted the notion of a very radical break between an early virtue language of unruly, passionate martialism, and a later language of 'moderation' and cooling private interest, as well as the corresponding idea that the two languages either separate republicanism from liberalism, or 'classical' republicanism from a fundamentally different 'liberal' brother. Indeed, the value of political moderation, along with fear of (democratic) passion and the appeal to rational interest was also there in the early writers, also in Machiavelli, the theorist of beneficial *tumulti*. The really important break occurred with the change in the Enlightenment towards new assumptions about which institutions and political forms produced moderation, and in particular in the revaluation of private, market based, and 'social' spheres of activity, as opposed to socialisation to virtue through traditional political activity, which, after the experience with religious fanaticism, was now represented as dangerous, immoderate, and irrational enthusiasm, the sentiment of uncontrollable masses and very much part of the problem, rather than its solution.

On the one hand, the new vocabularies of *doux commerce* and institutional architecture generated sophisticated new republican responses that sought to incorporate their criticism and to demonstrate, as did Tocqueville in particular, that only civic activism and associationalism, i.e., of a new, society-based kind, was capable of curing republican ills, in particular the dangers of popular government, and of generating beneficial manifestations of modern, democratic individualism, e.g., reflective patriotism and political impartiality. Republican argument continued *inside* the new universe of commerce, individualism, polite society, and social diversity.

On the other hand, the Enlightenment critique of the ancients contained a re-representation of what classical authors actually said which again informed the counter-Enlightenment romanticism which was a part of Rousseau's project, and which remains influential to this day. This great rhetorical move, which caused the constitutive republican argument to get lost in a myth of classicism, also made it possible for writers like Constant to participate in the great debunking of ancient liberty, while ending his great essay with a rather republican defence of civic activism in the framework of representative government.¹

The historical contrasts between the two traditions must be made according to a more pluralist appreciation of different ways of questioning, denying, overlooking, and eventually forgetting, different aspects of the republican argument, all to be

2. Constant, *Liberty of the ancients and the moderns* (pp.326-27).

traced in different 'liberalisms', liberal authors, or - perhaps best - in different counter-republican *arguments*. For instance, state of nature theory and other species of Enlightenment rationalism occasionally confused abstract deductions of rights with the legal constitution of actual states, and started to assume that such schemes could be installed as stable and unchanging through the hypothetical appeal to popular sovereignty as tacit consent, or could be delivered by history's design, because partaking in the ultimately rational ordering of human nature and the moral universe. Market forces or institutional-legislative design were seen by some as a more promising modern stand-in for the volatility of civic virtue. Propensities for virtuous behaviour (including the private virtues of the law abiding *bourgeois* and *homme*) were seen to derive from such sources as a psychology of sympathy. And solidarity was either a non-issue or an eventually unstated matter of cultural homogeneity and nationalism. Each of these historical trajectories are also important because they provide clues about where to look for similar blind spots in contemporary liberal theory. We return to this in a moment. Here, I wish to stress two additional points of some importance:

First, a very important corollary of my attempt to show republicanism in its diversity is to avoid all types of political nostalgia. If Lockean liberalism presumably was some distance from contemporary liberal conceptions of constitutional rule of law and *toleration*, republican traditions surely had a great many dark spots too. The conception of *libertas* in Cicero, Machiavelli, or Rousseau was a proto-liberal value without the rich moral texture of contemporary rights language. And some of the means and political technologies required to secure it can only be described as draconian. It is an obvious condition of contemporary relevance that these themes can become reconstructed.

But more profoundly, I have noted the existence of a series of constitutive tensions in republicanism. Their common denominator is an appreciation that securing liberty is never without friction, it always involves a price. And it is part of the republican promise that awareness of these tensions prepares political theorists and practitioners alike to confront political realities better. The exact balance between the enjoyment of private liberty and the demands of public activity and sacrifice cannot be stated in the abstract. Realising liberty as an intersubjective reality involves social control and shaming as well as reflection and tolerance; just as solidarity and patriotism, needed for the sake of common liberty, involve processes and images of exclusion whose content and nature may be more or less reasonable and accessible to difference. Finally, the shape of constitutional orders is both normatively and empirically a contingent matter.

I would personally wish to push republican thought in its more liberal, reflective, and reasonable directions - those building on Tocqueville, Jefferson, and American republican constitutionalism. But tensions remain constitutive of republican thought even here. And this is connected to the second point, which is about

why liberal political philosophy was able, as it were, to win. My account suggests as plausible that republican thought was defeated because tensions like those mentioned were eventually denied, along with the very relevance of the fragility of liberty argument in its various forms. By and large, the central value ideal of republicanism and liberalism - be it the liberalisms of Hobbes, Locke, or Kant - was much the same. But liberal doctrines progressively came to offer the realisation of this value, as it were, *for free* - that is, without tensions and ambiguity, without sacrifice, and without a call on citizens to have civic virtue.

Liberals did not 'change the subject'. Neither Locke, Kant, nor Mill persuaded their audiences (some like Hobbes, Constant, and Berlin, *thought* they did) to give up old values for the sake of new ones that were intrinsically better or outweighed the old ones. Although enormous shifts in the discursive construction of intimacy and private moral life did occur in eighteenth and nineteenth liberal thought, these were not compensations for the loss of public life. Republicans were not 'optimists' about human nature or the possibilities of civic virtue - they were rather 'pessimists', and rather more imaginative than liberals as regards the sheer range of human depravities and weaknesses and concomitant dangers threatening political orders. Nor was liberalism more 'realistic' in aiming lower, at either mundane and worldly, or inner life-oriented pursuits. This entire representation is mistaken and must be resisted. Whatever else its importance and valuable insights different liberal doctrines offered a discourse which promised a liberty which was *less fragile*, easier to get, subject to fewer dangers - and all in all *less demanding*. Who - among frequenters of Parisian salons, subjects of the Prussian monarchy, or settlers in the western territories of America - would not prefer this representation if convinced of its causal soundness?

The political phenomenology of the conditions of liberty, viewed as a whole, presents a *prima facie* concern for political theory to take very seriously indeed. It is possible to reconstruct the history of republican ideas, not just as a story of gradual decline and departure from great things, but as a series of more and more sophisticated restatements of the fragility of liberty problem. Early republican ideas were met by attempts to overcome the need for civic virtue and its often illiberal prerequisites, and these, in turn, met republican rejoinders, prominently by Tocqueville and, less noted (and not developed her), by Hannah Arendt, exposing liberal complacencies and wishful thinking. Contemporary rights-based political liberalism, with which republicanism shares the same central value ideal, should, at the very least, find reason to reflect on these obstinate modern rejoinders.

Now, the relevance of the republican argument depended in principle on the negative answer to whether, after all, liberals empirically speaking were right. *Did* the liberal theory that came after republicanism rest on wishful thinking and facile assumptions? Or did it, on the contrary, reflect the fact that political orders of lib-

erty were not - or no longer, in the radically changed world of the moderns - so fragile? Is a republican analysis of contemporary politics of any use today?

2. Empirical Relevance?

I cannot answer these questions with any degree of finality here. I do believe, however, that a systematic appreciation of the republican tradition equips us with some conceptual tools, a great deal of historical sensitivity, and better empirical imagination to be sceptical at the outset about liberal optimism.

Let me stress, first, that a contemporary republican case would at any rate be a *prima facie* one. It is obvious that the conditions of liberty include many things besides good citizens. I have no doubt that it is much easier to secure rights - not just social rights - in countries blessed with high levels of economic development, effective administrative infrastructure, and honest civil servants. Reflective citizenship and toleration of difference is likely to be related to levels of education, urbanism, and general social modernity. Both constitutional deliberation and the problem of solidarity present themselves very differently in different countries with different historical experiences. Also, more people enjoy more liberty without much personal sacrifice right now than maybe at any other time in history. And liberty is much further away from realisation, and requires much more civic virtue in Russia than in Sweden. The republican instrumental argument about the need for civic virtue is not equally urgent everywhere and all the time. The argument would be more like a permanent intuition that *any* order of liberty is in principle threatened. Dangers may be smaller or bigger, republican *decay* is relative, but even the most just and humane society may deteriorate.

I have suggested in the Introduction and elsewhere that republican fragility intuitions are being vindicated by the several turns of Machiavelli's wheel of *Fortuna* that have recently characterised world history. I also suspect that some of the popularity of liberal theory of the Rawlsian kind in particular may be attributed to a certain lack of sense of history. Such theory has thrived, perhaps, on a feeling that the welfare societies which were established in some quarters with much success and popular support, and which ordered relatively one-dimensional distribution problems through compromises between economic efficiency and modest equality, represented the normal state of affairs for other societies to gradually copy as they reached political maturity.

Predicting the rise of large scale migration and multiculturalist revivals in multination states, or the regional development of supranationalism, or the pull of capitalist globalisation, or of xenophobic nationalism would have been difficult inside any social science discipline. But Western political theory - liberal as well as other strands - was certainly caught off guard as history came rolling back. All in all, it has presupposed the historically relatively recent, highly unstable, and extraordinarily idealised political format of the nation state. Although the heralded

demise of this political structure is much exaggerated, its various problems are also those of liberal theory. If multiculturalism and globalisation thematise problems of constitutionalism, solidarity, and political identity, then 'rectifying revolutions' and the post-totalitarian experience of Eastern Europe highlight the difficulties of securing citizenship beyond the letter of constitutions and the problems of building and maintaining a *civil* society.

Several areas of possible research may be suggested – and much existing research placed in a new light – as elements of 'a republican research program'.² In the historical-sociological debate on national sequences and frames of *citizenship*, marxist and various state-functionalist writers have seen rights as 'given' by ruling classes or modernising elites responding to system-imperatives like territorial consolidation, conduct of war, management of the population, regeneration of the work force, or political 'integration' while largely ignoring the differences of various citizenship *regimes*.³ Other writers have concentrated on national historical sequences of inclusion, political cultural formats of citizenship, and functional conflicts between rights in the context of investigations of the degree and manner in which collective mobilisation and activist political cultures connect with extensions of citizenship, many seeing the rise of Marshallian citizenship (let alone its consolidation and further extension into new areas) as a contingent, open-ended, and reversible process.⁴

Robert Putnam's *Making Democracy Work* expressly referred to an empirical republican argument about the instrumental importance of *civicness*, which could and should be tested. Despite its many faults, that book has inspired a whole range of related research into the historically situated relationships between different types and (associational) formats of civic activity and mutualism and on the other hand the quality of public services and government responsiveness, social tolerance, trust and solidarity. It has also generated important theoretical discussions about the (ambiguous) meaning and motivational dynamics of each of these aspects of 'civic space'.⁵

Multicultural aspirations, new controversies and large scale functional changes in the area of social citizenship (workfare, de-regulation, 'third sector' involvement,

3. See references in the Foreword.

4. Marx, *On the Jewish Question*, in *Selected Writings* (p.52-53); Poulantzas (1973) cf. Van Gunsteren (1978:21-25) and Esping-Andersen (1990:13-14); Barbalet (1988:29-43); Brubaker (1992:41-49); Giddens (1985); Mann (1987:1988); Tilly (1992); Kaspersen (1997); Bendix (1964); Parsons (1969); Marshall (1992:25,28); Rokkan (1970); Dahrendorf (1974).

5. For instance Turner (1986;1992;1993); Held (1989); Shklar (1991); Tarrow (1994).

6. Putnam (1993); Bagnasco (1994); Cohn (1994); Diamond (1994); Foley & Edwards (1996); Goldberg (1996); Levi (1996); Portes & Landolt (1996); Sabetti (1996); Tarrow (1996).

new participatory social citizenship), and the challenge of supranational constitutionalism all demonstrate republican points about political pluralism and constitutional contestation as a highly plural and contingent affair. Part of the interest of these and other developments consist in highly empirical investigations into dynamics and constraints of actual processes of constitutional debate (including the pragmatics of 'bargaining' and 'arguing') and into various institutional experiments with deliberative democracy and conflict resolution.⁶

Finally, the burgeoning politics of political identity, nationalism, and group recognition, does not only constitute so many modern pathologies to be ignored or dismissed on normative grounds by liberal universalism. They are also elements of a universe for the integrating, reflective reconstruction of contemporary versions of republican patriotism. How such constructions could even begin to be envisaged (let alone actually carried out with sufficient public resonance), inside different national cultures, with each their different mnemonic frames and particular dilemmas of historical and contemporary exclusion, is also a matter of empirical discussion.⁷

3. The Nature of the Republican Challenge

In my historical reconstruction, I have seen no point in exaggerating the contrast between republicanism and liberalism. Indeed, I noted that even as the classical language of virtue and corruption was replaced by political cosmologies of progress and human ideals of autonomy and perfectibility, the republican core argument could still resurface, as in Kant's theory of an enlightened public, or in J.S. Mill's ideas of participatory democracy. Correspondingly, it would be unreasonable to deny the family resemblance between the tradition that I have reconstructed and the great American tradition of democratic theory, 'public philosophy', and much of the empirical political science interest in the civic foundations of American pluralism, from Dewey, Lippmann, and Laswell to Almond, Verba, Lindblom and, of course, Robert Dahl.

The liberalism against which the republican tradition has real bite is a different, more philosophical creed. At any rate I shall claim that it does indeed have such bite. John Rawls in recent years may be seen as having accommodated his original theory to real political conditions in a number of ways which suggest a certain openness towards the concerns raised in this thesis, including those expressed in the Introduction. Thus, one may note his concern with 'the fact of (reasonable) pluralism', with the conditions of an legitimising overlapping consensus, with political community as a common good, and with the conditions of a sufficient sense of jus-

7. See footnotes 68 – 70 below.

8. For Germany see for instance the *Historikerstreit* between Habermas (1990;1993), Stürmer (1993), and Nolte (1993); for an Italian debate see Panebianco (1991), Rusconi (1991a;1991b), and Scoppola (1991); for Britain see Larsen (1997) and Parekh (1994); and for Europe see Wæver (1990;1995). Also Kymlicka

tice, all as parts of a new emphasis on political 'stability' which seems to signal Rawls' new concessions to empirical constraints and conditions.⁸ I do not believe Rawls has moved a lot, however. More importantly, I think republican arguments may be formulated to suggest that also his new position is unstable. What follows is a very preliminary attempt to map some of the problems raised by a republican view of the world for Rawlsians and to suggest, equally tentatively, at least in which directions to look for answers.

In order to approach this discussion I shall start with Quentin Skinner, whose seminal work⁹ has already been acknowledged. In first bringing the republican argument about liberty to the attention of political theory, Skinner also made a number of point to the effect that republicanism presented an argument which was not just 'different' and 'older' but in conflict with liberal theory, in particular Rawls. In doing so, he actually overstated his case, or failed to make it very effectively. To assess the degree to which republicanism really touches Rawlsian liberalism where it hurts, I start by revisiting Skinner's critique. I do so by way of a discussion of a response to Skinner by Allen Patten which also deals with Taylor's conception of patriotism.¹⁰

Patten states a number of ways that liberals¹¹ - to the extent that they accept the *empirical claims* of republicanism - in his opinion are theoretically equipped to accommodate the *normative implications* which may follow from these claims. This general way of construing the republican challenge to liberalism as starting from competing empirical and causal assumptions, i.e. as a different set of *instrumental* arguments is certainly useful. Moreover, the article deals with both what we may call first order instrumentalism - questions concerning to what degree (if to any) civic virtue is required to secure and maintain free institutions - and with what we may call second order instrumentalism - questions about which (if any) measures are required in turn to generate the dispositions and civic abilities required for this virtue to ensue. On both counts, future debates between contemporary 'republicans' and their (Rawlsian or other) interlocutors would do well to recognise a distinction between largely empirical (and empirical-theoretical) questions about whether one or another reformulated republican analysis of instrumental conditions of liberty is accurate or realistic (and in particular to what extent it forces liberals to *explicate* and defend their alternative instrumental assumptions, also in the case of liberal theory which tries (and admits) to assume as little as possible); secondly questions about which normative consequences it carries for the shape of

(1996).

9. See Rawls (1993a).

10. Skinner (1986; 1990; 1992, 1998).

11. Patten (1996).

12. Rawlsians and other "contractarian liberals" (Patten 1996:25).

a recommending theory of politics if one or more of such analysis are assumed to be true; and thirdly questions about in what way such assumptions about 'realism' are relevant at all in political theory. In what follows I deal primarily with the second and, towards the end, the third question. But the first question is not entirely absent.

Starting with Patten's discussion of Skinner's critique to the effect that liberals have no place for *duty* (or for legitimate coercion); I move on to the question of whether and how Rawls has a place for an instrumental argument in favour of *civic virtue and the requisite institutions to generate such virtue*; and thirdly to the more particular question, not discussed by Skinner, of the need, legitimacy, and shape of *patriotism*. Fourthly, and going beyond the Skinner-Patten debate, I say a little about where I think the republican tradition would leave Rawls' ideas of an overlapping consensus. Fifthly, I summarise what, in the light of the discussion, may be said about the Rawlsian ambition of *neutrality*, which Patten claims is unhurt by republican arguments. Sixthly, and still in the light of the way that Patten defends Rawls, I use an appreciation of the latter's turn towards the question of *stability* to make some more general points about the relation between empirical social science knowledge and political theory, and about the relevance of 'realism' for this practice.

4. Patten on Skinner and Republican Normative Implications

Skinner, according to Patten, over and above his empirical quarrel with liberals, makes "the philosophical claim" about contractarian liberals that it is "impossible for them to take seriously the republican analysis of the maintenance of liberty".¹² Patten focuses on the normative implications that Skinner draws, rightly noting that Skinner does not spell them out in sufficient detail. There seem to be three such (related) implications. They are about how citizens have an *obligation* to be politically virtuous; about how social and political institutions should be shaped so as to *facilitate the acquirement of the civic virtue capacities* needed for political activity; and about how the state may *legitimately use coercion and legal sanction* in order to induce individuals to fulfil their duty. The problem for republicans, according to Patten, is that liberals like Rawls and Dworkin have no necessary quarrels with these points.

4.1. Rights and duties (and Coercion)

Patten rightly points out that Skinner overlooks Rawls' mentioning of a natural duty to justice. The duty to justice in Rawls' liberal society is not only the duty to respect the laws of justice in one's everyday dealings, it may also involve the support and furthering of just institutions, including decisions to participate in poli-

13. Patten (1996:30).

tics, and choice between political parties. Such a duty would be chosen by rational parties in the original position. Indeed, it takes some form of fairness or (other) Kantian argument to arrive at the idea of rational duty which Skinner seems to have in mind, as Patten also rightly notes that "no *particular* individual's participation is strictly necessary for the maintenance of liberty."¹³

Also, it is equally true that republicanism does not necessarily collide with a liberal conception of rights as 'trumps'. Patten points out that Dworkin and others are making the point that individual rights have primacy only in the sense that furthering and protecting such rights constitutes a good moral argument for some political scheme or action. Dworkin does not suggest (as does Nozick) that rights are such as almost always to preclude any social duties, but only, much like Skinner himself, that duties must be "right-based...ultimately justified not by goals or duties, but by the preservation and protection of rights."¹⁴

Nor is Skinner right to assume that a contractarian view precludes that law may in some cases be used to coerce us as individuals into doing what is necessary to secure our common liberty - and in this sense to 'force us to be free'. Liberals would insist that what takes place in such a situation is a legitimate restriction of liberty in one area in order to secure the greatest amount of liberty or the largest number of 'liberties' for all (as would, apart from some conceptual differences in some statements, instrumental republicans). Rawls explicitly mentions the legitimacy of conscription.¹⁵

All of these points are true, and so far Skinner's criticisms seem to have their real bite against libertarian state-of-nature thought and the assumption that individuals have their rights before they enter into society with others.¹⁶ But if Skinner is about to join in communitarian misunderstandings of liberalism, his criticism may be partly reconstructed.

First, he could at least be read to suggest the plausible thesis - which is of course 'merely' an empirical and sociological (Tocquevillean) one, that the social understanding of duties in a well-ordered society must be such that the appeal to a duty has as much actual motivational weight as the appeal to a right. This point is related to some sociological communitarians' criticism of an excessive 'rights talk'

14. Rawls (1972:334-35); Patten (1996:29).

15. Patten (1996:32).

16. Patten (1996:30-36); Skinner (1990:304-7; 1992). Patten also notes two more points. One is about Skinner's attribution to Rawls of the view that restricting individual liberty for the sake of common liberty is an unjustified 'utilitarian' concern for general welfare - but of course such restriction is in order if the common liberty is indeed common, i.e., that restricted liberty is not the sacrifice of an individual's liberty for the good of others. Another concerns liberalism's alleged misunderstanding of negative liberty and adds nothing to Patten's other points.

17. Nozick (1974).

which makes the moral reality of a *sense of duty* in a society increasingly difficult to come by.

Secondly, and more importantly, one might ask where duties should fit into Rawls' scheme in terms of lexical priority: are they dependent on a just or 'nearly just' society, or should they operate and be valid already some time before, as based on some notion of a political community as a co-operative scheme whose ability to ensure minimal *libertas* to its members is constituted by the exercise of civic duties (as republicans might wish to require)? In Rawls, the natural duty to justice is in fact premised on the full implementation of the two principles of justice. It is exactly because these principles are known and accepted by citizens that they have no rational reason, behind the veil of ignorance, to insist on making "the requirement to comply with just institutions conditional upon certain voluntary acts on their part", i.e. actual free consent. From a republican perspective, Rawls' duties scratch where it does not itch, because such duties are particularly required on the road *towards* a (nearly) just society – but this said republicans would still have to specify what constitutes the requisite base line common good of a political community, from where duties could 'start'.¹⁷

A third reason is the most important one. Although Patten is right in noting that both rights and duties may and will enter into neo-Kantian justice deductions, the very point about 'rights as trumps' is that they function to secure the individual from the trespassings of the state and society,¹⁸ something which gives them a special, absolute and inviolable, status. Now, republican *libertas* is certainly also about the value of rights as something stable and reliable for the individual citizen. However, the republican emphasis on the historically and empirically changing conditions of liberty is associated with the potential need for new or extraordinary duties that restrict the use or value of certain rights. Moreover, the acceptance of constitutional diversity and change over time (below) makes it possible and likely that different duties may be required in different types of polity.¹⁹ By contrast it is a general aspect of neo-Kantian foundationalism that it aims to specify philosophically a set of rights and duties – including perhaps a duty to military service, backed by the coercive force of law – which, as part of a constitution, are (in Rawls'

18. Rawls 1972:335). An article by Parekh suggests ways of conceptualising such a political community, as based on many things including what looks like a republican intuition of historical interdependence of fellow citizens bounded in a common political 'fate', implying also – but not specifying how – that societies may be too undemocratic or unjust for such obligations to ensue for the individual (Parekh 1993:241).

19. Dworkin (1978:150-205).

20. A universalist welfare state arguably requires specific arrangements, such as a duty to civil service, in order to generate that sense of moral obligation which is crowded out by state institutions acting as our 'brother's keeper', as implied by Wolfe (1989); and some forms of political or administrative decentralisation may require more local participation than traditional representative democracy.

phrase) "removed from off the political agenda".²⁰ The very idea that further substantial duties, backed by politically formulated claims about empirical necessity in a specific type of republic, and brought forward by a (constitutionally amending) legislative majority, could go beyond these rights and duties cannot be accepted by Rawlsians.

Republican rights and duties are reciprocal *relations*, rather than inviolable possessions (this is arguably also the way to understand Rawlsian *Recht*, as opposed to libertarian conceptions), also in the sense of more or less continued outcomes of re-deliberation. The practical difference between republican ('populist') and Rawlsian ideas may not always be terribly big. Just as some new forms of rights and (particularly) entitlements may be seen as matters of 'application' inside a framework of constitutional essentials,²¹ particular duties may indeed be regarded as policy measures, depending on the degree of comprehensiveness of liberal constitutional ambition, and of course depending on the nature of duties required. Even so, whereas the specification and differentiation of rights in new circumstances of cultural and administrative complexity seems increasingly accepted by liberal writers, I am not sure this would be the case with duties. The *way* that Rawls talks about duties is after all rather weak and general. The duties "to support and to further just institutions" that Rawls has in mind are primarily about respecting justice when it is in place, and on the assumption that everybody else does so too. We are also "to assist in the establishment of just arrangements", but Rawls hastens to add "at least when this can be done with little cost to ourselves".²² Whereas the (very heavy) duty of military conscription has been in place for many generations in Western Europe and also (for that reason?) in Rawls (but is now being dismantled for technical and economic reasons almost everywhere) what would he or other liberals think of such schemes as a duty for both sexes to do a year of national civil service, or a duty for all to take turns in a rotating (second) deliberation chamber, or the notion that such duties might be enforced by law (or by using such sanctions as the loss of certain social rights)?

All this said, there is reason to question the fruitfulness of Skinner's exclusive focus on duty as potentially backed by coercive law. Different classical authors make different points, and so might contemporary republican formulations of what is, at any rate, an empirical matter. But generally speaking, whereas some duties, as exemplified above, are likely to require some sanction, in other and indeed in most instances they may not.²³ Parekh has usefully spoken of *political obligations* as obli-

21. Rawls (1993a:151).

22. Habermas (1992a).

23. Rawls (1972:334). The natural duty to justice is also rational to choose, because it helps underpin the sense of justice which Rawls sees as the main motivating factor in a liberal society (see below).

24. It is a (good) liberal value in itself to seek to justify to individuals that they

gations which should not, or only in special circumstances and to a limited degree, be legally or coercively sanctioned, because doing so would jeopardise the public sense of responsibility on which they rest (and the integrative side-effects which they produce). Moreover, these obligations – to participate in politics, to scrutinise and criticise the government, to take civic initiatives locally or whatever – are not unconditional and ‘personal’ in the sense of the obligation to obey the law or to pay one’s taxes. Everybody does not have to participate all the time (but sufficient *numbers* have to do so), and duties to civic activity must relate to whom a person is, and what are his capacities and station.²⁴

Also important (and noted by Parekh), just as the question of legal coercion is not so prominent as assumed, the tradition (with Cicero as notable exception) is generally inclined to view duty, not primarily as a moral calling pulling from within, but more as a motivating force pulling from without. Obligations are social ideals about what we owe to fellow citizens. And republicans stress the importance, more particularly, of mechanisms of social control, shaming, and esteem (some of which may upset some liberals). This takes us towards the second normative implication of the republican argument, noted above, namely how social and political institutions may legitimately be shaped so as to facilitate the acquirement of civic virtue (a first aspect of republican *second order instrumentalism*, patriotism being another).

4.2. Institutions and Virtue

Although Patten makes valid points in defending liberals, he makes too much of the Rawlsian friendliness towards instrumental republicanism, i.e. when claiming that parties to the original position “recognise the fragility of free and just institutions”.²⁵ It seems fairly clear that Rawls, and by implication the ghostly choosers he puts behind the veil of ignorance, do *not* in fact speculate much about the fragility of institutions in the republican sense. There is no mentioning in Rawls of participatory democratic structures or other necessary channels of virtue. However, and as noted in the Introduction, one outcome of the communitarian onslaught has been a literature on *virtues* in liberalism, for instance the work of Steven Macedo, along with the question of proper liberal education to democratic reflection and tolerance.²⁶

should do something. And if they remain reluctant on more than free-rider grounds, the quality of the ensuing civic activity may be poor indeed. We may remind ourselves of Machiavelli’s typical low view of *forced* conscript soldiers as opposed to citizens who identified rationally with the common good of their city.

25. Parekh (1993:244-46).

26. Patten (1996:31).

27. Macedo (1990; 1995); Dagger (1997); Callan (1996); Gutmann (1987). To Macedo, the “sort of character ... associated with a liberal form of personal excellence” involves “willingness to ‘live and let live’, to subordinate personal plans and commitments to impartial rules of law, and to persuade rather than coerce”. They also

The important ambitions of these several new *civic liberals* collide, however, with Rawls' turn in *Political Liberalism* towards avoiding 'comprehensive' doctrines and relying on a 'political' conception of the person. The problems of Rawls' ambition to be as neutral as possible by 'staying on the surface' – criticised among others by Macedo – were noted in the Introduction. Rawls' idea seems to be that the particular reasonable pluralism which would generate an overlapping consensus and support a public conception of the good, adequately democratic and reflective citizen, is a pluralism which is already, as it were, modernised. Strong believers and convinced supporters of comprehensive doctrines come in suitably laundered varieties. By living in a well-ordered society and by learning to appreciate Lockean doubt and the value of civility and trust, they have become accustomed to bracketing parts of their comprehensive doctrines whenever this is required.

Here, the republican tradition, for instance in the form of an Arendtian update on Tocqueville's conception of the ambiguity of civil society, would argue that reflective persons are not a stable achievement as much as the fragile outcome of the 'decision to think'; that Rawls severely underestimates the degree to which, in a complex modern society, toleration as social openness and actual respect for difficult rights has become a highly demanding civic skill; and that the new turn in the West towards intellectual obscurantism, celebration of 'feeling', and xenophobic nationalism, much of it arising for distinctly *modern* sociological and psychological reasons, testify to the numerous ways that enlightenment may be reversed. Republicanism, here, suggests the need to remain committed, as a matter of policy and public culture, to controversially 'thick' ideals of democratic reflection.

Even Macedo's 'deep' liberalism is rather complacent when it comes to explaining how such an ideal might be realised. Rather than speaking about institutions it trades on a rosy liberal idea of *civil society*, according to which private pluralism and shifting involvements more or less automatically produce good citizens:

we should not overemphasize the amount of political participation that liberalism requires. Liberalism ... does not force on its citizens a conception of the good life with a very large political component (...) liberal citizens learn and apply public norms in their interaction with others. Children ... criticise, discuss, listen to others, and take votes,

include "that we respect the rights of people with whom we disagree strongly", "that we are capable of putting ourselves in the shoes of others", "attitudes of tolerance and sympathy among people who disagree", and a willingness to live with such "[L]ive options [which] incite self-examination, self-criticism, and experimentation". The private ideal of reflection and autonomous self-legislation is linked to the civic virtues (judicial, legislative, and executive ones), of impartiality of judgement, adherence to principle, capacity to "survey different ideals in personal deliberation", and capacity to "resolve, act, and persevere rather than thrift, dither, and crumble at the first sign of adversity" (Macedo 1990:265-75).

they follow, debate, change, and help enforce rules, at home, in school, at work, in games, and with their friends (...) private life goes a long way in helping to prepare us for our public duties

Also,

liberal subjects will prize not isolated activity, but the liberty to choose how to be associated, with whom, in what manner, and for what purposes [and] include participation in the host of clubs and associations that do exist and flourish in liberal societies²⁷

Macedo provides no evidence that American society - his own context - creates the citizen character that he wishes to see.²⁸ His otherwise important work testifies to a strange and unargued optimism of some contemporary liberalism.²⁹ Although moderns may not again become *incapable* of reflection, it is misleading to claim that once "one's horizons are broadened ... no act of will can narrow the vistas again".³⁰ For many, it is unbearable to live a reflective life. For all of us, it is sometimes inconvenient and demanding in view of our inclinations, petty interest, and weaknesses of will.

A serious version of this complacency seems evidenced in Rawls off-hand remarks in *Political Liberalism*, to the effect that he had no quarrel with Skinner's instrumental republicanism, and that affirming it did not require the type of "comprehensive doctrines" which Rawls took such pains in that work to avoid. There might be "certain differences on matters of institutional design" and Rawls disagreed with Skinner's "political sociology".³¹ What Rawls is basically saying here is that rather less virtue is likely to be needed than Skinner thinks, and that the means to further such virtue in turn only involve uncontroversial institutional measures. His point about 'political sociology' puts us back to the 'sense of justice' as evolving in different associations (elaborated in *Theory*), and to liberal civility as an outcome of his peculiarly tamed Lockean pluralism in *Political Liberalism*.

Moreover, the reason why Rawls thinks that he can take in (Skinner's) instrumental republicanism without going comprehensive, is that he assimilates the republican argument to a (weak and unspecified) *moral* instrumentalism - instrumentalism 'in theory' as it were - which could become part of an overlapping, and motivating, consensus, a point to which we return below. He does not feel that he

28. Macedo (1990:273-74).

29. See also Shils (1991) on liberal *civility* and Rosenblum's idea of the distinctly liberal conception of society as *elective* (1994a; 1994b).

30. The post-modern liberal communitarianism of Rorty (1985), or the romantic or agonistic individualisms of Kateb (1984; 1989) or Connolly (1991) are other examples. Each place their confidence in transgression and identity experiments to foster a general spirit of ironic tolerance of diversity.

31. Macedo (1990:279).

32. Rawls (1993a:205).

has to contemplate this or that institutional measure, such as non-neutral public education to democratic reflection or forms of participatory and deliberative political structures, which he would not like.³²

5. Which Patriotism?

Patten says more about the other aspect of *second order instrumentalism*, i.e. the question of patriotic identification as a necessary motivating solidarity device. He claims that liberals do not have a problem with some forms of (liberal) patriotism but certainly with others and secondly that the liberal forms of patriotism are quite sufficient to *work* (he is aided here by *not* taking first order instrumentalism entirely seriously: what is needed to motivate to solidarity of course depends on how demanding is the solidarity in question, i.e. in terms of what we owe our fellow citizens).

Unfortunately, Patten's discussion is based on Charles Taylor whose views, discussed in Chapter 8, are different from republican arguments. Patten distinguishes between a "liberal or constitutional patriotism" and (what he sees as) a non-liberal, republican patriotism. Rawlsians have no difficulties, he claims, with affirming the former. As regards the latter, "liberals would be wise to stand their ground".³³ Patten reaches this conclusion by tipping the scales strategically - helped by Taylor - in his own direction, as he describes the theoretical and empirical claims of each of the patriotism arguments in turn.

First, he argues that a liberal patriotism (like Taylor, he uses the American example) may be based on "a bond of solidarity ... [between] ... fellow citizens as a result of the fact that they are all engaged in a common enterprise of putting forward and defending certain ideals". In fact, such solidarity is an instance of that "co-operative venture for mutual advantage" which follows from Rawls' sense of justice inside a well-ordered community. Nor is such a disembodied patriotism merely "conceivable". Its feasibility is obvious, as "one need only think of the American case mentioned by Taylor, or the strong commitment of Canadians to their new Charter of Rights and Freedoms [*sic!*], or ... the inspiration one feels in reading some of the great liberal texts such as Mill's *On Liberty*".³⁴

Secondly, he accepts Taylor's representation of republican patriotism as a doctrine about respecting the pre-given and unalterable cultural identity of national groups as the basis of their political motivation. This allows him to argue that re-

33. Rawls says, with characteristic vagueness, that a liberal regime may take "certain steps to strengthen the virtues of toleration and mutual trust, say by discouraging various kinds of religious and racial discrimination", without thereby becoming "a perfectionist state" (Rawls 1993a:195).

34. Patten (1996:40).

35. Patten (1996:39-40). But the specific passages which Patten quotes in Rawls (from the section on 'The Morality of Principles') clearly imply the limitations of the sense of justice (Rawls 1972:472-79).

publican patriotism leads to suppression of civil liberties (e.g. a patriotism based on anti-communism), and to the impossibility that citizens may wish to transfer their loyalties to "institutions which are better equipped than their own political institutions to confront threats to their liberties". He even argues *ad absurdum*, still following Taylor, that republican patriotism could be construed to involve appeasing a culturally alienated group by granting them unfair advantages, all in order to secure common liberty.

The contrast causes Patten to dismiss republican patriotism because it has unsavoury consequences for liberty ("the causal mechanism linking citizen motivation with the preservation of a free society remains unclear, since the object of citizen allegiance differs from the result that republicans claim patriotism will achieve ... a free society"). By contrast, as "the object of their allegiance is defined in terms of liberty, liberal patriots respond to the suppression of liberties with ... outrage, and to opportunities to secure liberty further with ... eagerness".³⁵

Again, I believe Patten makes things too easy for himself and for Rawls. It is unclear to what extent Rawls would be willing to enter the theoretical orbit of instrumental patriotism at all.³⁶ In discussions of moral psychology and sociology in *Theory*, although Rawls recognised the origin of a *sense of justice* in groups, including 'a well-ordered and just society', where a capacity for justice is developed in ever wider circles, as aided in the concrete exposures to the moral actions of others and to their expectations of justice in turn, Rawls still claims that principled morality may be an independent motivation which is strong enough to make us act justly, also towards those "who have not yet had ... opportunity to display an ... intention to do their share", and also "where the institutional scheme in question may be so large that particular bonds never get widely built up."³⁷

Rawls is no doubt right that such a universalistic morality of principles - which knows no boundaries - may and often is learned, that its human experience is at the heart of what morality *means* (whatever else it means), and indeed that the exposure to such boundless moral intuitions is common (as when we ask ourselves why the children of third world parents have to suffer, while our own do not). But it is also a non-contingent fact of modern societies, ignored by Rawls, that the *moral will* to apply such principles with any degree of consistency is not a matter of either understanding or affirming the reasonableness of such principles, but of an *indeterminate* common sense delineation of how much justice we may be expected to give (as when we say that we cannot be expected to help the whole world), even to those who *might* become capable of partaking in Rawlsian reciprocity of justice (i.e. as immigrants to welfare states which could go on functioning in a sufficiently well-

36. Patten (1996:41).

37. The following draws on work in progress (Mouritsen 1999c).

38. Rawls (1972:474-75).

ordered Rawlsian manner with annual intakes of, say, 1-2% work immigrants for some time to come).

Moreover, there are some signs that Rawls' theory *does* rely on bounded solidarity (also bounded in a non-trivial sense),³⁸ as evidenced in his new work on the law of peoples with its ingenious but morally unconvincing stage construction,³⁹ as well as in certain features of his theory which come into view in the context of elite work migration between poor and rich states and the question of whether or not to have wage incentives or other institutional measures to ensure societies against such dramatic brain drain which might cause them to be no longer 'well-ordered' (where a strict reading of Rawls' intent would seem to suggest that Rawlsians 'must be patriots' for the sake of justice in a community).⁴⁰

In *Political Liberalism* Rawls has favourable things to say about political community and of the way "a democratic people distinguish different periods in their history" and take "pride in distinguishing themselves from non-democratic peoples". But all that Rawls is saying here is that liberal community is perfectly legitimate as such, that its experience may become valuable in itself (much as argued by Taylor), and that its development may be *possible* (indeed seems likely) as a by-product of enjoying life in a well-ordered community with just institutions over time. Rawls clearly does not think they should be actively furthered by the state, nor even that such sentiments are necessary. Thus, he does not link the recogni-

39. Rawls of course readily acknowledges that his theory presupposed the legal confines of states (Rawls 1993a:228, note 51). My point is that these boundaries cannot merely be understood in the trivial sense of a functional 'division of (justice) labour' between states, necessitating certain numerical restrictions on immigration and cooperative schemes between states (Goodin 1988; Shue 1988).

40. Rawls (1993b) and a parallel statement in Habermas (1994a); Poulsen (1994a;1994b).

41. See Lukes (1995); Van Parijs (1995). I do not aim to criticise Rawls on moral grounds (Whellan 1988:6-16). The republican point in this context is about how to generate sufficient solidarity, using legitimate identitarian means, given that such means are necessary. I have nothing to say here about how to delineate or restrict membership of a community, how to conceptualise partial as opposed to universal obligations (Miller 1995b), or how to deal with the obvious dangers to *any* cosmopolitan fellow feeling, if the legitimacy of the former is too complacently or one-sidedly argued (see essays in Nussbaum 1996). Republicans would not prescribe to either a communitarian 'birthright to states conception' (Walzer 1990b; Taylor 1993; cf. Ingram 1995), or to a culturalist version of instrumental exclusion (Hallbrunner 1989), arguing in stead that anybody is in principle capable of partaking in a republic. However, it is evident that they would have to consider what is minimally required to aspire to citizenship, and how to deal in a principled way with the fact that not everybody are allowed *entry*, whatever their civic qualifications (Bauböck 1994). But these hard questions are of course shared by liberals, including those who gesture towards a new 'cosmopolitan' citizenship (Held 1995; Linklater 1998; see debate in Hutchings and Dannreuther 1999, and Kveinen 2000).

tion of the common good of political community to his new concern with 'stability' (below) which still speaks of "a normally sufficient sense of justice."⁴¹

Greg Hill, writing before *Political Liberalism* and reconstructing Rawls' position vis-à-vis Taylor, has argued along lines similar to those of Patten that while political liberalism has no place for favouring one political way of life over another, original parties who care about the stability of liberal institutions would give "special considerations ... to institutional alternatives that encourage ... participation" and the identity formation produced through such participation (but significantly giving no details about these institutions). And as a sociological point, seen to be latent in Rawls, he notes that the "citizen will want "to meet her obligations because in so doing she strengthens her identification with the community as a whole, thereby gaining a sense of membership and participation in its collective accomplishments". Such an identification, will arise in a functioning liberal society where "convergent individual ends can develop into a genuinely common good," or a good valued "because it is shared" and where "a love of the community and its institutions" will arise from the simple enjoyment of the advantages of "social cooperation".⁴²

The trouble with both Hill's and Patten's rescue attempts is that they at most establish that Rawls does have, or *may be seen to have*, an 'instrumental argument' – unlike what republicans and Taylor thinks. Thus, again, they may claim that there is no disagreement 'in principle', and that a republican *type* of concern with patriotic identity can find a place inside a neutral liberalism. But the question still stands about whether 'participating in' (i.e. living inside) comprehensive justice schemes and tolerance-demanding public cultures really does produce solidarity (or whether more demanding activities are needed); whether integrative civic identities may be built on the reading of J.S.Mill (rather than the national discourse of this or that civic memory or aspect of political culture), and whether *whatever* mechanisms are needed may really be assumed to generate themselves without the help of the state, for instance through the education system. If Hill and Patten were disappointed in any or all of these respects – and if such disappointment was taken seriously – there would seem to be a disagreement 'in principle.'

The *way* that neither of these commentators take instrumentalism *empirically* seriously is indicative of a broader problem to which I return below. Here we may note that the contrast erected by Patten between a realistic and feasible liberal theory of patriotism (luckily the one which Rawlsians can affirm and remain neutral) and a draconian republican one is both an inaccurate depiction of the latter (re-

42. Rawls (1993a:141,204); cf. Dworkin(1992).

43. Hill (1993:75-80).

membering the elements of republican patriotism, laid out in the previous chapter) and for several reasons an unrealistic appraisal of the role of the former.⁴³

There is every reason to believe that motivations to liberal solidarity, *let alone* solidarity of the demanding Rawlsian egalitarian kind, presupposes a type of bounded solidarity which has to be based on something rather more concrete than the reading of liberal philosophy (Patten presumably did not think of Mill's remarks on nationalism). In a world where global, corporate elites do not have to rely on any one national welfare state but may eventually tire of paying to the many who still do, solidarity may soon enough become a scarce commodity. The steady influx of newcomers with whom the terms of belonging are continuously negotiated and politically contested does not help. Nor, finally, is the problem made any easier, if republican civic obligations are added to what we owe each other.⁴⁴

Not only is solidarity more demanding and more difficult to generate in a pluralist, open, and civic society. It is also, as part of a republican analysis of political pluralism, made more necessary. As noted in Chapter 8, the constitutional deliberations of republican *political autonomy* require a readiness to civic impartiality, of a reasonable give and take on the road to a contingent and fragile *concordia*. Because citizens cannot be expected to be motivated by the anticipation of any harmony of *zwangloser Zwang* redeeming their limited rationality, the very willingness to enter such dialogues with any degree of responsibility and open-mindedness, *risking* one's own groups interests and view points, can only be assumed if one's political adversaries are also fellow citizens. There has to be a minimal sense of shared fate, as well as an experience of "relations of reciprocity" for such civiness to get off the ground.⁴⁵

44. Patten (1996:43); Rawls (1972:245-48).

45. Although support for the welfare state remains high in Europe, research indicates that traditional redistribution is somewhat less strongly supported in societies with higher levels of socio-economic development and among groups with higher incomes and education. These trends are neither strong nor alarming and their predicted impact was vastly exaggerated by advocates of 'welfare-backlash' theories of the seventies. However, combined with the turn of European electorates towards post-materialist values and individual fulfilment, there may still be some reason for concern (Kaase & Newton 1995:68-71,155ff; Scarbrough 1995). Miller (1999) analyses how solidarity is more demanding, and requires to be more bounded, the more participatory and civic a country's political traditions.

46. Miller (1999:65,77-78). Of course, this type of argument *has been* short-circuited in Rousseau fashion: people's identities may be required – or manipulated towards – such conformity and uniformity that the problem of willingness to impartiality almost disappears, as individuals are so alike that they agree anyway. Moreover, the argument does not imply, I believe, that new levels of democracy and republican *libertas* cannot be aimed at. But it does suggest at the very least that some sort of basis for solidarity and common identity, and some degree of mutual-ity and trust has to be there first. In a European Union context there is little future in the search for a European *nation*. However, there may be in the more limited

To assume, as does Patten, that non-neutrality of political identity is an anomaly is patently untrue. Historically, all Western political communities have been integrated through nation building. Some national identities are less thick on culture, *Blut and Boden*, and more accessible than others. But even in felicitous circumstances they involve a selectively orchestrated re-membering of political history and ideals of good citizenship that serves to include some and exclude others. Nor is the quest for national and other larger (ethnic) group identities going away with the increasing modern potential for reflection, stressed by Habermas. Such collective identities serve many purposes, including strategic ones.⁴⁶ But among them is certainly that they cater for deep needs of psycho-ontological security, feelings of belonging and recognition, which, under modern conditions, seem irreplaceable by other identitary reference,⁴⁷ and are also more difficult to domesticate, contrary to Marxist assumptions, than those of economic class.⁴⁸ Indeed, national identity is returning, not only as post-communist 'bent twigs',⁴⁹ or as popular defensive-xenophobic Western European backlash, but also in the form of an increasingly widespread, often deliberate, reflective, and elite-centred concern with 'national mentality'.⁵⁰ We are as obsessed with identity as ever. Such identities do not tend to go away, or even necessarily become less strong, as their substantial cultural content becomes progressively thinner, more symbolic, and more reflective.

Here, a seemingly reasonable suggestion might be to follow liberal intuitions, let sleeping dogs lie, and identities be. But this will not do. A new concern with patriotism is equivalent to an active encounter with nationalism, a political siding with the least exclusive identities. Refusal to engage with patriotism does not make nationalism go away, it leaves the field wide open for it.⁵¹ Moreover, more or less inclusive conceptions of who could be a worthy citizen have material and institutional consequences, i.e. in terms of rights, public policy, and risk of discrimina-

creation and visualisation of political interdependencies and tangible common projects that concern what could eventually become a European people, all *without* awaiting full scale European constitutionalism, but certainly requiring some further mechanisms and procedures for democratic deliberations at this level (Schmitter 2000).

47. Glazer & Moynihan (1975)

48. Bell (1975); Berlin (1976); Ignatieff (1993).

49. E.g., Hirschman (1994:214).

50. Berlin (1990a).

51. Complete with a fast growing academic industry investigating histories of, say, 'Englishness' (Samuel 1989:vol.I-III), 'Canadianness' (Kaplan 1993), Danishness (Østergaard 1987) which thrives on the wealth of national myths while attempting their deconstruction.

52. As noted also by Viroli: "Se i socialisti, scriveva Rosselli, e sono parole da meditare, 'pur si combattere queste forme primitive o degenerate o interessate di attaccamento al paese, si ostineranno a ignorare i valori più alti della vita nazionale, non faranno che facilitare il gioco delle altre correnti che nello sfruttamento del mito nazionale basano le loro fortune" (Viroli 1993:463).

tion. Secondly, as recognised by politicians from Chirac to Blair to Clinton, and as evidenced in the rhetoric of their speeches, existing national identities is simply the medium of political integration. Such identities may be employed for good or bad purposes, but there is no alternative, 'pure' language of patriotism.

I believe that the republican tradition contains elements towards a critical theory of political identity. This would be a theory of the content of collective political identities which are substantial and concrete enough to integrate modern citizens by motivating them to do their share in a community to whose existence and adequate functioning they are reminded of owing the enjoyment of their common liberty; but also sufficiently flexible and capable of reflective reformulation so as to make room in principle for newcomers with their contributions, and even to cater for their specific, hitherto excluded or degraded identities. And it would be a theory of the *practice* - and the conditions and constraints of such a practice - of generating such forms, i.e. of conceptualising patriotism as a civic activity of reflective, reconstructive re-membering.⁵² The parameters of such practice is an empirical matter of the discursive *matrixes* at hand in countries with each their political cultures and constitutional traditions.

In this last regard the conception of *constitutional patriotism* is not quite on target. Habermas does note that patriotism is tied to historical horizons of diverse national experiences, his point being that national pride is legitimate when, against what the 'too conservative' Gadamer thinks possible, it is subjected to a public discourse which achieves sufficient distance to criticise it from the point of view of the present, excluding bad bits and keeping the good ones.⁵³ However, in Habermas' essentially Kantian theory, the solidarity work is done by increasingly rationalised, increasingly abstract and 'de-subjectivised', and increasingly boundary-transcending processes of 'communication'.⁵⁴ Traditions are simply the contingent contexts of these processes, the overlapping life-world resources that facilitate communication by providing it with a starting point. But this takes the bite (and

53. In terms of Nancy Rosenblum's typology of the integrative tasks of civil society, appropriated for our purposes, republican identity must create substantial moral attachments, feelings of obligation (to the political community). Secondly, it must deal with alienation (of excluded groups). And thirdly, it must temper and loosen the grip of too strong and particularistic solidarities, i.e. weaken the hard cores of (majority) nationalism (Rosenblum 1994a). See Alexander (1991; 1992); Parekh (1994).

54. Habermas (1990; 1992b).

55. Compare this with Habermas' hopes for a *European* identity of the same post-nationalist stuff as state patriotism, and capable, it seems, of indefinite extension. The vague sociological notion of participation in a forward-oriented public discourse may be interpreted as a 'communicative' version of the second republican idea of solidarity through joint political activity. But it is as difficult to connect republican notions of concrete solidarity with Habermas' ideas of rationalisation through communicative processes in a generalised *Lebenswelt*, as it is to see it in

the ambiguity) out of republican patriotism. Habermas fails to recognise that solidarity, in order to work, is always - somehow - bounded and particular. 'Post-national' identities should not only make traditions reflective and normatively *legitimate*, but also do so in a manner that keeps such identities instrumentally *effective* as factors of collective motivation, as well as capable of modification to generate new, culturally overarching solidarity.⁵⁵

Viroli makes much more of the need for concreteness⁵⁶ in an analysis which makes a number of points parallel to my own discussion in Chapter 8. However, while the recovery of the historical concept of patriotism (as distinct from nationalism) is important, Viroli's own advocacy of contemporary patriotism is slightly rosy. In the epilogue to his book on the topic, Viroli takes issue with Rusconi's critique of Habermas,⁵⁷ rightly criticising Rusconi's suggestion of basing democratic patriotism on substantial cultural belonging. Instead, and using as his example one of the few countries where *Kultur* elements have no role to play, he argues that love of country must be a strictly political love of liberty which in turn:

produces only liberty. Bigotry, intolerance, and war are the products of another love; that is, love or longing for oneness or uniqueness (...) Our way should be that of liberty; that is, a political way. We do not need more citizens attending national festivals with great fervour; nor do we need more citizens willing to offer their lives to protect their country's religious or ethnic or cultural unity⁵⁸

It is difficult to disagree. But Viroli's neat distinction, like the work of Habermas, fails to take seriously the way that also the experience (or memory) of liberty is concrete and contextually embedded. Patriotism, because created and talked about, is not static and fixed but malleable and subject to contestation, different interpretations, even reinvention. But this does not make it an easy category. The

Rawls' 'participation' in a just and well-ordered society (Habermas 1992b: 6-7).

56. Habermas discusses how citizenship to immigrants should not be restricted on 'cultural' grounds as in Germany - not how immigrants could partake in a German constitutional patriotism or why it is relevant that they do so (Habermas 1994a:135ff).

57. Viroli (1992:290ff; 1993; 1995, especially the epilogue).

58. Rusconi (1991a; 1991b). Rusconi pointed out that Habermas does not attend to the fact that (competing) national identities belong to particularist *Lebenswelt* structures which, in Habermas own reflective hermeneutic, can only be rationalised in a piece-by-piece fashion: "Il lavoro critico di correzione e autocorrezione di queste deformazioni - affidato al discorso universalistico dei cittadini - non può negare o ignorare le matrici storiche e materiali da cui quel discorso prende leteralmente le sue parole. E il suo ambiente e contesto comunicativo" (Rusconi 1991b:326). Yet, Habermas implies the possibility of a fully rationalised rights-universalism, shared by all, but somehow 'linked' to particular cultural heritages.

59. Viroli (1995:185).

'pollution' of patriotism is not coincidental. A tension *does* exist between asking 'what is the nature of our common liberty', with its focus on the history of a particular country, the experience of specific groups, and the cooperative tasks such groups could envisage for themselves in the future; and, on the other hand, the disposition to take into consideration how others, newcomers, have different histories and aspirations of liberty, and to try to incorporate or construct bridges to these. Moreover, we have stressed the non-relativism of republican core values, but only to a certain point: The constitutional specifics of *libertas*, the particular historical predicaments, insecurities, or trespasses (be they territorial, economic, or religious) experienced in its name, and the contingent institutional outcome of historical settlements, all delimit *a people's* liberty.⁵⁹

6. Pluralism and Political Deliberation

The last important area where a contemporary republican argument is incompatible with Rawls' liberalism, not touched upon by Patten because not discussed by his interlocutors either, is of course the republican departure from the philosophical foundationalism of neo-Kantian political theory. Republicanism is defined by its acceptance of a core of *libertas* and more broadly of the idea that the common liberty of citizens in a republic is constituted by a juridically (constitutionally) defined set of 'rights' (apart from the fact that early republicans did not use this term). But the difference that divides the waters between Rawlsians and republicans is the latter's acknowledgement that rights and constitutions derive, not just empirically but also normatively – despite the use of natural law arguments too – from (some incarnation or representation of) *the people*, and not from a philosophical reconstruction of it. It is between liberalism as a utopian doctrine to be used entirely *against* politics, and republicanism as conceptualisations of how to generate situated types of impartiality and reasoned give and take deliberations about plural values.

Republican thought may in part be seen to concern the art of the possible, about how to conceptualise the fact that constitutional outcomes are always sub-optimal, because of limitations in impartiality, reason, and knowledge, but that popular *legitimation* of *libertas* is nevertheless required. However such a contemporary theory could look like – where to place a role for civil disobedience for instance – Rawlsians may choose to call this a concession to non-ideal theory that is of no concern to political philosophy.

But there are two additional ways, again, that a republican view would be *empirically* informed so as to be at odds with Rawlsianism. The first way is in its con-

60. We may compare Germany's constitutional provisions against Holocaust denials and conspiratorial political activity with USA's celebration of freedom of speech and association in each their collectively mnemonic contexts.

stitutive recognition of a high degree of ultimate normative indeterminacy: there is no other way to establish the best constitutional settlement in a given time and place than to deliberate on the aspirations about liberty that individuals bring to the public sphere. Values are plural, situated in history, attached to evolving aspirations of cultures – more or less overlapping, local or global, temporary or durable – forwarded by ever new groups which emerge from obscurity and oppression, or form in the face of new social, technological, ecological, or national dangers, or scarcities and dimensions of conflict, which may legitimately be seen to jeopardise their projects. And there is additional pluralism because new *constellations* of aspirations emerge in *new peoples*: new pluralist combinations of groups who find that they have to live together, or choose to do so.⁶⁰

I am inclined to share the view that the very meaning of morality for moderns involves a Kantian baseline of equal respect and concern, of affirmation of the equal dignity and value of persons, and that *normative argument* is significantly structured by these and certain other related values. I also believe that this places non-trivial constraints on the conceptions that could be accepted from a 'moral point of view'.⁶¹ This said, any conception, including Rawls' particular view 'from nowhere'⁶² reflects a specific time and place, and more particularly the moral pre-conceptions and ultimate values which the philosopher brings to his construction. This does not render such constructions either illegitimate or useless, or rule out that specific values and combinations of values may be given a more or less coherent and impartial reconstruction. Nor is it at all implied – indeed the republican tradition implies the contrary – that no continuity of basic values exists to be modelled in such manners, nor that all or most basic values are incompatible, let alone incommensurable and inaccessible for reasoned compromise.⁶³ Nor does it deny that some formalised system of rights and duties has to be formulated, by the very nature of the several dimensions of moral pluralism in societies of any complexity, and that these dimensions constrain its possible formats in ways ignored by traditional communitarians and marxists alike⁶⁴

Recent years has seen a general lowering of universalistic ambitions. In *Political Liberalism* Rawls responded to criticism by changing the subject,⁶⁵ although the degree to which 'overlapping consensus' and 'reasonable pluralism' signals a de-

61. Bellamy (2000).

62. Kymlicka (1990:4); Macedo (1990:46); discussed in Mouritsen (2000c).

63. Rawls, according to Lukes, endowed his hypothetical individuals "with historically and socially located features", which were "recognizably those of some modern, Western, liberal, individualistic men" and this was "not merely contingently, but necessarily the case" (Lukes 1977c; 1977d). A short critique of universalist intentions of liberal rights theory is Bellamy (1993:44-54).

64. Berlin (1969;1990;1994:81-82); Lukes (1994).

65. Lukes (1991b).

66. Anderson (1994).

parture from his own belief in *justice as fairness* as the right liberal view has been exaggerated. However this may be, Rawls' idea of an overlapping consensus seems to imply the idea that groups *living under justice as fairness* could come to support it from different perspectives, modifying their comprehensive views in various ways to secure the fit. For republicans, inclined to say that such a convergence would merely be around a conception of justice (among several flavours of *libertas* which no original position construct could so drastically reduce) all the fuss about reasonable pluralism is somewhat odd in the first place.

The way that Rawls deals with political pluralism, from this perspective, is irrelevant in a very fundamental way. The entire point of *Political Liberalism* is to examine the conditions of 'stability', i.e. in this connection circumstances under which an overlapping consensus could be made to converge around a political conception of justice, and *justice as fairness* in particular. The point is *not* to develop systematically why a general or a specific conception of liberal justice is justified in the first place (that is, meeting the main body of criticism of *Theory*). Thus, Rawls uses a two stage process which begins by simply presuming that a conception of justice has been derived. Such a conception has somehow been parachuted into place, as if Rawls were a philosopher king, or as if, as it sometimes seems, he thinks of himself as the philosophical voice of a 'nearly just society' (the United States?), or of an emerging actual consensus on his type of egalitarian welfare liberalism. With these matters in place, the second stage is an argument about how adherents to various comprehensive doctrines - *having been properly socialised* by living in such a society - would come to affirm this conception. Rawls assumes the perspective of an egalitarian liberal majority (or elite) who sees the task of political liberalism as getting as many as possible inside the fence, justifying to minorities principles that are already safely in place, because their reasoned consent is valuable. If some recalcitrant dogmatic were to insist on fighting it out, this is too bad, but not a serious problem - for us:

Nevertheless, in affirming a political conception of justice we may eventually have to assert at least certain aspects of our own comprehensive ... doctrine ... At [a] point we may have no alternative than to deny [something], or to simply imply its denial ... maintain the kind of thing we had hoped to avoid⁶⁶

If as noted Rawls' hope to avoid affirming deep autonomy (so as not to offend traditionalists) constituted misplaced defensiveness, his continuing 'comprehensiveness' as regards the content of justice is oddly complacent.

There is also a second way a republican account of political pluralism as a precondition for deliberative politics is empirically informed, i.e. beyond the above

67. Rawls (1993a:152).

sense of necessary engagement with concrete constellations of value pluralism. First of all, republicans would generally stress, as particularly evident in American writers, that rights and liberties in a constitution are institutional and contingent, not just or (in America) primarily in the sense of embodying different shades of *value* around *libertas*, but also a specific ways to organise a community in light of what are assumed to be the likely *effects* of such rights – on individuals and their interest, on the distribution or curtailment of specific privileges, on social peace, the distribution of property, and so on. Again, such functionality of rights was understood to be a matter of (contested) empirical evidence in different and changing circumstances – as contrasted to those remote ‘self-evident’ rights which concerned the essence of humans and broader rhetoric of democratic justification.

In a contemporary context, the relevance of a similar attention to the functionality and likely (unintended) consequences of rights is currently evidenced in controversies over multicultural rights,⁶⁷ the citizenship policies of the European Union⁶⁸ and the future of different welfare state models.⁶⁹ In each of these areas different value visions are at stake, and reasonable citizens stepping into the public light to debate (or behind the veil to reflect) could not be expected to leave behind those libertarian, conservative, radical democratic, or multicultural bids for citizenship all of which are inside a compass of generalisable human values. But the *way* debates about such general conceptions are carried out is about how particular rights are spelled out in detail (i.e. ‘social’ citizenship) and translated into institutions and policy programs. Moreover, the contestation of one model or another is very much based on judgements and demonstrations of realism and functionality: Would libertarian citizenship give us a place where large groups of people steal bread and sleep under bridges, or a benevolent and spontaneously self-regulating right-anarchic utopia? Would restrictions of the freedom of speech in areas of inter-ethnic *hate speech* produce more or rather less tolerance? Would it start a snow-ball effect towards an illiberal society? Would sensitivity to cultural needs of certain groups create a spiral of demands and strategic ethnification, and make people prisoners of their origins? Is there a trade-off between the rapid acquirement of social rights for immigrants and their capacity to become self-supporting?

Finally, republican conceptions of citizenship, because of this attention to empirical conditions and effects, appears to be self-reflective. To the extent that certain enforceable duties, restrictions of rights, entitlements, and immunities are *necessary* in order to have sufficient general virtue, or in order to generate the motivation and capacity to exhibit such virtue, these necessities must become part of republican citizenship. Through history candidates to such elements of republican

68. Appiah (1996); Glazer & Moynihan (1975); Gutmann (1996); Gür (1996); Necef (1996); Vertovec (1996); Mouritsen (1999b; 2000b).

69. E.g. Meehan (1993); Welsh (1993); Kveinen (2000).

70. For an overview, see Roche (1992).

citizenship have included the distribution of land and property, a right (and duty) to receive public education, a duty to military service, and much else. Contemporary writers have suggested that a range of rights (in particular political rights, but also other 'supporting' rights) may be derived in this manner, with Habermas almost matching Rawlsian ambitions.⁷⁰ Others have taken a different road, attempting to derive a set of duties.⁷¹ Although certain basic rights and, possibly, some duties may well be established this way, it follows from my presentation of republican argument that a whole range of rights and duties, as well as the specification of criteria and conditions of civic membership – along with other constitutional matters such as the design of political (participatory) institutions and their jurisdictions – must be debated and decided with reference to the best empirical and causal arguments and evidence which exist in a society. Needless to say, such arguments and evidence, even under the best of circumstances, will be the stuff of essential political contestation.

A discussion of what an empirically informed normative theory of republican deliberation would look like,⁷² or to what extent it shares any common ground with various forms of discourse ethics⁷³ is beyond the scope of this thesis and my present powers, as are any attempts to comment on the enormous literature on the sociology and psychology of motivational constraints to impartiality in constitutional foundation processes,⁷⁴ or on various experiments with forms and institutional settings of deliberative politics and on the amenability of different types of issues to reasonable debate or to interest brokering.⁷⁵

7. Neutrality?

By now a number of reasons have been forwarded to the effect that republicanism may be rather controversial for Rawlsians (including new Rawlsians) to affirm. One way of summarising this is to consider the more general Rawlsian ambition of *neutrality*.⁷⁶ Rawls of course does not mean that neutrality should be understood in the self-undermining sense, occasionally attributed to liberals, of extending indifference towards such practices and forms of life which jeopardise basic liberal values.

71. Amar (1990); Gutmann (1993); Habermas (1992a;1994b).

72. Bellamy (1993f; 1994).

73. Attempts which, despite their differences, share the pluralist and conflict-accepting starting points of republicanism include Ackermann (1988;1991); Gutmann & Thompson (1996), Bellamy & Hollis (1999) and, in a European context, Bellamy (2000:105-9).

74. Alexy (1992); Benhabib (1989); Cohen (1990); Habermas (1983;1992a;1994a), Ingram (1993); Moon (1991); Weinberger (1994).

75. Ackerman (1992); Elster (1991;1993).

76. Dryzek (1990); Dryzek and Torgerson (1993); Mansbridge (1992); Fishkin (1995); Majone (1989).

77. Rawls (1993a:190-95). On liberal neutrality see also Dworkin (1978a); Ackerman (1980); Nagel (1986; 1991).

The question is if Rawlsians are prepared to ponder whether they can afford to be neutral as regards a range of practices which may be necessary to realise and sustain these values. There is not, I believe, so much room for moves in this direction inside *Political Liberalism* as Rawls and Patten seem to think. And this is so even if we abstract from the very obvious ways that neutrality is wrecked by that universe of pluralism and compromise which is not a part of Patten's discussion.

Strictly speaking, Patten notes, following Rawls and Joseph Raz, liberals entertain a "reasons-for-action or justification-based view" of neutrality which avoids the "appeal to the truth or superior value of any particular conception of the good". They do not have a "consequentialist view of neutrality" which seeks to further strict neutrality in the actual outcome of policy,⁷⁷ and which, Patten implies, would rule out a liberal concern with patriotism, civic virtue, or a sense of duty.

But what Rawls is actually saying is that a state should "not do anything intended to favour or promote any particular comprehensive doctrine rather than another, or give greater assistance to those who pursue it". However, "[w]e must accept the facts of common sense political sociology" that *any* working system of justice will in fact further *some* comprehensive doctrines. Rawls' endorsement in the second statement of such unintended effects is quite different from an endorsement of a republican type of deliberate and calculated instrumentalism which, on a number of points, clearly violates also the first of Rawls' statements.⁷⁸

In the case of duties, I argued that the duties republicans had in mind *might* include some that went well beyond the weakly specified duty to justice and its correlates, and more importantly that the very question of which duties were needed could not be 'taken off the agenda.' In the case of virtues and institutions and policies required to sustain virtue we found that Patten, like Rawls himself, played down the need for, and the demanding nature of, civic activity in a well-ordered state – causing us to wonder how left liberals could hope for a realisation and long term entrenchment of *Justice as fairness* egalitarianism plus comprehensive cultural tolerance, except by means of considerable degrees of *continued* mobilisation of public reflection. Rawls' quasi-endorsement of Skinner's republicanism seems quite incompatible with the type of neutrality he also claims for a liberalism of overlapping consensus that 'stays on the surface'. Institutions, say, which favour more political participation at grassroot levels, or a better deliberative space in various public forums constitute controversial public support of distinct political forms of life. Republican advocacy of institutions and educational practices aimed to produce democratic reflection would seem to militate exactly against this avoid-

78. Patten (1996:43). See Raz (1986:114). Rawls' endorsement of the principle is in *Political Liberalism* (Rawls 1993a:192-93).

79. Rawls (1993a:193,196).

ance of 'deep' liberalism, as would the piecemeal engineering of the shape and strength of civil society associations.⁷⁹

The case of patriotism is equally obvious. A republican perspective suggests the legitimacy of a state-sponsored patriotism which might involve the structuring of public space (monuments and exhibitions, independence days and anthems), civic history in schools (a certain focus on important events of national histories, link-ups with immigration narratives), and forms of political and social participation for integrative purposes. Even as a progressive political discourse tries to move patriotism in a more and more political, reflective, and inclusive direction, it is still concerned with a country's experience with, and memory of, common liberty. Not all liberals would have a problem with this, but clearly Rawls and his like would.⁸⁰

8. Political Theory and Empirical Analysis

Patten's article has been discussed at some length because its critique of Skinner represents one of the only attempts to discuss 'instrumental' republicanism from a main stream liberal perspective that I have come across. His article highlights the general point that if the republican challenge to (liberal) political theory regards the need to integrate empirical concerns, Patten's Rawlsianism also reflects how the two camps think in different ways about such concerns.

Patten significantly ends his discussion of Skinner's statement of republicanism by dismissing it "because it fails to identify any *philosophically interesting* disagreement between the two positions". Although there may be some disagreement "about specific policy prescriptions" there is none "at the level of philosophical abstraction at which Skinner's critique operates". While liberals may "balk at some ... proposals" this is "not, as Skinner maintains, because they cannot, *in principle*, endorse the republican argument".⁸¹ Although Rawls and republicans may have different empirical assumptions, Rawls is *in fact* able to accommodate republican instrumentalism philosophically – as indeed Rawls states himself, noting that "[a]t

80. Yet, already among Rawls' natural duties to justice in *Theory* were the "willingness to see the situation of others from their point of view, from the perspective of their conception of their good" and being "prepared to give reasons for our actions whenever the interests of others are materially affected" (Rawls 1972:337). In *Political Liberalism* he speaks of the (non-legal) 'duty of civility' ("to be able to explain to one another on those fundamental [constitutional] questions how the principles and policies they advocate and vote for can be supported by the political values of public reason" (Rawls 1993:217).

81. Even if Rawlsians could affirm patriotisms on purely instrumental grounds, it should be obvious that also the "reasons-for-action or justification-based view" of neutrality is violated. Part of the republican idea of republicanism is the recognition that a patriotic identification, given its instrumental point of common liberty does give rise to a public affirmation of the "value of ... a particular conception of the good". Unless this is part of the public advocacy of patriotism, it will not work (Patten 1996:43).

most there can be certain differences on matters of institutional design and political sociology of democratic regimes." Nor does Rawls have difficulties with the fact that such "differences, if there be such, are by no means trivial; they can be extremely important." In what way can these statement be understood – in light of the differences and seeming incompatibilities between the two doctrines? They testify to a certain argumentative strategy which can only be sustained, as I shall argue, at some cost.

The sequence of this argument, at any rate in Patten, is the following. First it is denied that there is a difference (Rawlsians also recognise duties and a place for virtue). Then it is noted that there may be some differences in details (but that also some additional unspecified measures, possibly empirically relevant but so far unnoticed by Rawlsians, could be integrated in a neutral liberal account). After this it is recognised that some measures *do* come into conflict with Rawlsianism (although Patten significantly avoids the details of this question – leaving outside the fence only the strictly illiberal elements of Taylor's account of patriotism), but these measures are deemed unnecessary (or even less realistic) than an alternative liberal account. Finally, at the same time that such a more or (in Patten) less serious denial of relevance is voiced, it is argued that the difference is of minor importance, merely contingent and disputable, i.e. not one of *principle*, the point here being that Rawlsians can be shown to have an *alternative* empirical and instrumental account of how the world could be (how a just society could work), one that fits the theory better in moral terms. The position is ambivalent: between clearly wishing to discredit the republican account on empirical grounds (as unnecessary or productive of illiberal side-effects) and, if pressed, claiming that this is just *another* empirical account, implying that the question of which is better is not important for philosophers to discuss. This way of arguing is also visible in Rawls' new turn to 'instrumentalism', as we shall see below.

I wish to end this thesis with some reflections on what such integration of empirical concerns may mean and where this leaves political theoretical enquiry.⁸² Providing that any or all of the republican causal analyses are sound, in what way, if at all, does this affect political theory and Rawlsian theory in particular? There are, it turns out, a number of different possible positions.

8.1. Rawls' Stability Argument

One possible answer, and not at all an uncommon one, would be 'in no way at all'. A tendency has been visible in analytical moral philosophy to retreat to a position that merely requires moral propositions and systems to correspond to what is em-

82. Patten (1996:36, *italics added*).

83. The following brief reflections on a large and complicated topic have been partly prompted by two (yet) unpublished papers by, and interesting discussions

pirically possible. 'Ought implies can', in this line of reasoning, does not rely on psychological theories of motivation (e.g., the incentive structures of market societies) or sociological theories of moral learning. Only, the moral demands that are placed on individuals and societies must not be *impossible* to meet. Normative theory is seen as an independent inquiry which only accepts the most uncontroversial and unchanging social facts about human capacities, and human societies must be made to correspond to the results of this inquiry or be criticised when they do not, not the other way round.

I certainly do not dismiss this type of theory. There is a basic truth, overlooked by communitarians, in the idea that the very meaning of moral discourse and conceptions of justice is that they *do not* reflect prevailing conceptions and institutions. Also, it is evidently a legitimate and valuable task to investigate systematically the logical structure and implications of diverse normative intuitions and arguments about the meaning, distribution, and interrelation of central human values like rights, equality, and liberty. Such inquiry, with its formal rules, stringent language, and thought experiments remains an important intellectual resource, providing ideas, clarifications, and analytical tools for all types of political theory. Although not all inquiries we would call political theory uses abstraction in this way, there is certainly a prominent place for theory that does. But there may be, I would argue, a disagreement on where abstraction should *start* from.

When still maintaining that this obstinately purist form of arm chair philosophy in a sense constitutes a 'retreat', I have in mind the fact that all *classical* political theory, from Aristotle to Hobbes to Mill (yes, even Kant) was constantly and seriously concerned with explaining the world as it was and could be, with humans being as they were. So was, incidentally, the political theory of the fifties and early sixties,⁸³ famously pronounced 'dead' until Rawls entered the scene.⁸⁴ To voice, against Locke, Rousseau, or Jefferson, the complaint that their theories were unrealistic or unrealisable was to offer a very serious challenge. Thus, to practice serious empirical abstinence, not only as a convenient stage of analytical abstraction but out of principle, let alone to suggest that such abstinence ought to be a main defining element in the self-understanding of an academic discipline, is tantamount to redefining the task of Western political theory. (Of course, normative *purism* strikes one as all the more exotic in a complex moral world where many different values compete, and where an ahistorically valid, final conception of justice is not to be expected.)

Rawls has been seen as moving beyond the pure version. His somewhat idyllic remarks on moral psychology and sociology in the second half of *Theory* cannot be

with, my colleague Søren Flinch Midtgaard (Midtgaard 1998a; 1998b).

84. Parekh (1996:503-7).

85. Laslett (1956), but cf. Berlin (1962).

ignored. His dual concern in *Political Liberalism* with the problem of *stability* also seems to have empirical repercussions. His ambition here was to inquire,

whether people who grow up under just institutions (as the political conception defines them) acquire a normally sufficient sense of justice so that they generally comply with those institutions ... [and] whether in view of the general facts that characterise a democracy's political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus⁸⁵

This, combined with his talk of the political cultures of Western societies as these have developed historically, has been interpreted as a retreat to the much more limited ambition to work up the 'situated' intuitions of Western liberalism with its mixture of egalitarian potential and cultural pluralism. The ambiguous notion of an overlapping consensus as embedded in a common 'political culture',⁸⁶ and Rawls' decision *not* to focus on the part of *Theory* which had received most criticism, i.e., the argument from the original position, led some commentators to detect a communitarian turn in Rawls.⁸⁷ Others have seen, in Rawls' ambition from the beginning of the eighties to avoid 'comprehensive doctrines' and thick accounts of the liberal self, little more than a disguised *modus vivendi* concession for purposes of appeasing non-liberal minorities to accept, pragmatically rather than from a sense of justice, the terms of a social peace.⁸⁸ Such readings have also charged Rawls with lack of realism: contemporary Western political cultures do not converge on Rawlsian egalitarianism, and several brands of (Western based) fundamentalists still exist (and still appear) who are not likely to trade their most treasured articles of faith and identity for peace and toleration, be it Hobbesian or Lockean.

Both readings of Rawls are mistaken and fail to understand the manner in which he wants to avoid making liberalism "political in the wrong way".⁸⁹ Although the significance of Rawls "burdens of judgement"⁹⁰ is less than clear, as is exactly which doctrines come inside his normative fence, Rawls is concerned with *reasonable* pluralism, not empirical pluralism *tout court*. His references to the content of

86. Rawls (1993a:141).

87. Rawls, in an article prior to *Political Liberalism*, noted that the purpose of 'Kantian constructivism' was to "articulate and to make explicit those shared notions and principles thought to be already latent in common sense; or ... to propose to it certain conceptions and principles congenial to its most essential convictions and historical tradition" (Rawls 1980:518).

88. E.g., Bell (1993:9-11).

89. Hampton (1989).

90. Rawls (1993a:142).

91. Rawls (1993a:54-58).

Western political culture, while seemingly mistaken,⁹¹ do not signal his intention to adapt his theory to what currently prevails.

Unlike more radical left-egalitarian theorists such as Cohen,⁹² Rawls does in fact seem to be convinced that his ideal, perhaps for quasi-Hegelian (or Habermasian) reasons to do with *Justice as Fairness* tapping the essence of the rationalisation process of modernity, is indeed about to be vindicated by (Western) history, so that an overlapping consensus is emerging around his conception of justice. Moreover, the *actual* legitimisation (affirmation) of a political conception of justice is part of its value, both as a precondition for having a reciprocal 'fair system of cooperation' and because of the independent liberal importance to individuals of being able to confirm the validity of political institutions to themselves.⁹³ And *sufficient* legitimisation, its exact numerical extent unspecified, is, again, a precondition for stability. However, there is no question of letting the contingencies of actual pluralism affect the content of the basic justice principles. Hence Rawls' recognition that some comprehensive conceptions simply have to be 'denied'.

In the same way, his other stability idea, i.e., that citizens holding different comprehensive conceptions will not only confirm, but also support ('comply with') a political conception of justice, does not constitute acceptance of non-moral (pragmatic, Hobbesian) reasons to support justice. In stead, they reflect Rawls' appeal to moral reasons of a 'political' kind, in particular the affirmation of civility and social co-operation as independent values.⁹⁴ The realism of this (along with other aspects of "moral sensibility", in particular the Lockean recognition by citizens of burdens of judgement and their propensity to cooperate justly with those who are willing to so co-operate with them)⁹⁵ constituting the foundation of a 'normally sufficient sense of justice' is also claimed by Rawls, although evidence, presumably depending on reasonably just societies doing their work for some time, is obviously less available. However, the question of whether or not such a sense of justice is actually about to be produced, or produced in the heart of every citizen as effective *solidarity*, still has no bearing on Rawls' conception of justice.

This is important. Rawls' concern with 'empirical' stability is dependant on a previous stage of high moral theory, and the introduction of stability requirements and arguments must not be allowed to affect this first stage. In his own words, regarding "the problem of stability",

92. Also as regards the question of egalitarianism, as shown by Miller (1992).

93. Cohen (1995).

94. For this point, see Mulhall & Swift (1996).

95. This important point is stressed by Midtgaard (1998a:4-6). For the idea of the reasonableness and moral, as opposed to the merely instrumental or rational, meaning of reciprocity, see Rawls (1993a:48-54).

96. Rawls (1993a:81-88).

the explicit discussion of it begins only at the second stage since the principles of justice for the basic structure are not on hand until then⁹⁶

The task that Rawls sets himself with the stability problem is to inquire if and how it is possible for a just society, i.e., one that has adopted institutions and policies that embody a political conception of liberalism, to *function*, in the sense of perpetually generating the two conditions of an overlapping consensus on its core principles and a propensity to comply with and support the institutions of this political liberalism.

In what way does Rawls move beyond the purist position with which we started? At one level, he does not move a great deal. Thus, a main point of *Political Liberalism* is to introduce certain new unchangeable empirical aspects simply as *moral background conditions* for political theory, i.e. the rediscovery of the Lockean "fact of ... reasonable pluralism".⁹⁷ Here, Rawls' concern with stability appears as a moral argument about the *reasonableness* of stability, as it were. Departing from a revised understanding of reasonable moral diversity and a set of constraints on legitimate moral arguments that follow from this unavoidable fact, he advances a set of new moral, although 'political' reasons that diverse individuals would have for rendering political liberalism stable, although they are not (and because they are not required to be) comprehensive liberals. At this level, although the framework of his enquiry is more 'realistic' in the sense of accepting the fact of pluralism, Rawls may be read to stay clear of the low phenomenal ground entirely: He may not be concerned with how real individuals actually behave, but only with how they ought to, or have reasons to behave, *and are in fact capable of behaving*.

At another level, to repeat, Rawls' analysis does show evidence of the same ambivalence discussed in connection with Patten. It is full of references, vague but optimistic, to how Western societies are operating, or almost about to operate. And while most of Rawls' analysis (and probably all of his claim to merit inside the community of analytical philosophy) is staked on moral analysis, he does seem to want to do more, to suggest that his theory is not completely disconnected to what we see around us. He states it as his ambition also to investigate whether what should reasonably happen may also realistically be assumed to happen in real societies. Indeed "the political philosopher should be concerned with 'practical political possibilities'".⁹⁸ Discussions of moral psychology and institutions of moral learning in *Theory*, and (in *Political Liberalism*) of constitutional law making, of the role of "the basic structure," and of "how the aims and aspirations of people are

97. Rawls (1993a:141).

98. Rawls (1993a:xix).

99. Midtgaard (1998a:2), citing Rawls. In the same passage, Rawls significantly notes that "moral philosophy need not be" (1987:24).

formed" are all also to be seen in this light.⁹⁹ But Rawls' optimism, to whatever degree he *actually* entertains it, is also tied to the fact that he does not have to sustain them – for reasons which he states in a principled way:

It is necessary to appreciate the *nature* of the empirical constraints of Rawls' conception. We recall that Rawlsian stability arguments only start at the second of two stages, where the first is the analysis of the principles of justice in a reflective equilibrium. Rawls' introduction of empirical questions at the second stage is itself *normatively constrained*, in the sense that the psychological mechanisms and institutional frames which are to further an overlapping consensus and the development of an effective moral sense (republicans would add further preconditions of 'stability') must also *only* be such that can be reasonably affirmed by someone who supports the political conception. Furthermore, it is *conjectural*, as it were, in the negative sense that while a scheme must be "viable", this only means that it must not stand defeated by established knowledge of "human nature and social theory". Rawls' empirical or 'instrumental' concern only has to be *a* concern. Although it cannot be wildly implausible, *moral coherence* is much more important than 'realism'. Rawls, we might say, is always willing to give his theory the benefit of the doubt. His thoughts on moral psychology are particularly illuminating and deserve to be quoted at length:

Human nature and its natural psychology are permissive: they may limit the viable conceptions of persons and ideals of citizenship, and the moral psychologies that may support them, but do not dictate the ones we must adopt. That is the answer to the objection that our account is unscientific. We cannot say anything we want, since the account has to meet the practical needs of political life and reasoned thought about it

However, this falls short of an attempt to establish the most realistic conditions of "human psychology as a natural science". Instead, we must

specify the most reasonable conception of the person *that the general facts about human nature and society seem to allow*. The difficulty is that beyond the lessons of historical experience and such bits of wisdom as not relying too much on scarce motives and abilities (say, high altruism and high intelligence), there is not much to go on. History is full of surprises. We have to formulate an ideal of constitutional government *to see whether it has force for us and can be put into practice successfully in the history of society*¹⁰⁰

100. Rawls (1993a:269).

101. Rawls (1993a:87, *italics added*).

8.2. Beyond Rawls: Options for an 'Empirically Sensitive' Political Theory

There is little doubt that Rawls' analysis of the empirical conditions of stability is quite weak, both in terms of institutions and psychology. But there is a deeper question here which Rawls does not raise, and which he may be aided in not raising by his seeming conviction that the Western world is about to vindicate his stability requirement. What, one might ask, would happen to the first stage of normative enquiry, if this were not the case (i.e., that the stability requirement were not vindicated, and more importantly that Rawls were to be willing to accept this fact)? What, more particularly, could Rawls respond, if the best social science information available - with all the limitations pertaining to the ambitions of truth claims in the social sciences or science generally¹⁰¹ - relatively unambiguously failed to contain examples of stable empirical worlds where aspects of Rawls' conception were realised?

At least three options would be open to Rawls. First, he might admit to have learnt that the world will never see a completely well-ordered and just society and that humans are forced to live in a suboptimal moral reality, as suboptimal moral creatures. Although individuals are in principle capable of living together in perfect justice, facts, say, of inherent egoism or failure of rationality, that exist as a matter of empirical social science regularity prevent them from reaching this felicitous state. Justice would become an abstract ideal that could be comprehended, but never reached. The trouble with such an ideal would be its uncertain status as a guide for policy: would it be desirable or prudent to move *towards* it, when it could never be reached and, in particular, if the side effects of doing so might render outcomes less than second best? Theoretically, the very construction of a theory of justice would perversely require Rawls to withhold the most important bit of information from the participators to the 'veil of ignorance' procedure.

Secondly, Rawls might opt, as he is about to do in the passage cited above, for a *utopian* strategy. Faced with troubling social science evidence, he might simply argue that what seems impossible now might be possible later. In fact, the very structure of his two stage reasoning invites a Hegelian short circuit. Marx, with typical recklessness, once claimed that "mankind always sets itself only such tasks as it can solve".¹⁰² But appeals to History, most people have recently become inclined to argue, are not very good arguments for anything, and it would certainly be

102. E.g. Popper (1968).

103. Marx, *Preface to A Critique of Political Economy, Selected Writings* (p.390). A sustained criticism of Marxist teleology is found in Lukes (1985a:27-47). According to Lukes, Marx and Engells were utopian in the wrong way: they accepted the utopian hopes of the 'utopian socialists' whom they despised. But they did not, as the latter did, ask such speculative questions that were sensitive to empirical evidence and experience about the way a socialist society might function.

unreasonable to expect anyone to step behind a veil of ignorance armed with Hegelian or Marxist historicism. At any rate, even if 'Justice' were reserved to denote this abstract hope that History might deliver, political theory would surely have to be concerned not only with the purely hypothetical institutional form of a society abiding by the moral law within us, but also with the investigation of its best empirically possible approximation *now*. And not the former but the latter would be the focus of attention for a participator to an original position, whose interest, according to Rawls himself, is to have an actual, reciprocal system of social co-operation.

This points towards the third possibility that Rawls might adopt, which is also the one that I think he should adopt, and which may in fact occasionally be latent in his theory already.¹⁰³ This is the option of accepting in principle that political theory should be prepared for '*falsification*', i.e. that it must embody a principled sensitivity to the evidence of social science research, and thus to the possibility that certain moral ideas, such as Marx' undeveloped and hazy, yet still comprehensible notion of a communist society, just may not be possible, or at least may not be possible under conditions acceptable inside the theory itself. Political theory, here, would be concerned with the just society, in a sense where 'just' also means empirically possible. Taking this step of course lets the cat out of the bag. The quality and meaning of evidence is endlessly contestable, as is the question of *how* realistic something has to be. Certainly, a legitimate academic division of labour would allow theory of the Rawlsian kind to *start* with a set of more or less controversial empirical assumptions, but then quickly proceed to a relatively self-contained logic of strictly normative enquiry. The difference would be the possibility that reality strikes back, that certain theories may have to be abandoned or modified.

This would also of course open the field for research dedicated to showing that Rawlsian theory, its normative shape since *Political Liberalism* intact, could in fact be given an empirical foundation beyond Rawls' own vague conjectures, for instance by analysing a requisite set of robust but non-controversial (to political liberalism) social and political institutions, and possibly by specifying the place of knowledge about such institutions in a 'wide reflective equilibrium'.¹⁰⁴ But such a program to rescue Rawls' conception might soon run into difficulties, for a number of reasons which republican thought is able to highlight.

However, it is necessary to distinguish between two different levels of criticism that take into account Rawls' premises and intentions.

104. Thus, as pointed out by Midtgaard (1998b:2), Cohen (1995) has recently discussed the status of Rawls' assumptions of incentive structures, claiming that these are indeed non-moral facts that should not be allowed into the original position. Our point here is that they should, and more facts along with them.

105. Such a project is suggested by Midtgaard (1998a:8-36).

First, it is a fundamental premise of Rawls' new concern with stability that he does not claim (or rather, given his vague gestures to signs that the West is 'getting there', he does not *have to* claim) that his political liberalism is *actually* stable, or that contemporary political cultures presently contain the seeds to make it. The potential fact that they do not, does not affect the type of realism at which Rawls aims: he does not concern himself with the question of *transition*. By 'practical possibility' Rawls exclusively refers to the possibility of a plausible account of "the ability of justice as fairness to be stable once achieved".¹⁰⁵

Now, there is a case for delineating the question of realism in this manner. For a political theory dedicated to ask empirical questions, there is a clear analytical distinction between what is empirically possible now - given historical relations of power and inadequate popular understanding - and what could be conceived to *function* empirically under certain specified, possible conditions. (A strong reason to at least *also* work with the latter type of theory is of course that the former may degenerate: either to a crude rationalisation of what *some* members of a society have an interest in affirming, or to a rationalisation of the depressing fact that many states of affairs in any society at any one time fail to conform to its conception of justice, thus causing some to deem that conception irrelevant.)

This does not mean that the normative problems of how to operate in a suboptimal moral environment, in particular how to (gradually) effect a transition towards a just society by legitimate means, and how to balance means against ends in a world where the exact chances of reaching desired ends are impossible to assess, must not remain of first importance for political theory. In particular, and as noted above, a normative theory is certainly required which is able to address the relation between ideal reasonable pluralism and the requirements of a democratic process of constitutionalism. Some might even say that these matters, difficult to handle as they may well be, are more important than Rawlsian projects of perfect justice, and too important to leave entirely to politicians, none of whom have the makings of the Great Legislator. Another way of putting it is that analytical political philosophy, while 'normative', is not 'critical', as in *critical theory*. There is hardly a trace of interest, here, in *liberation*, in the sense of a systematic consideration of the way that historical societies must place normative goals before them whose realisation are latent in their material development and in the critical consciousness of unnecessary unreason and injustice of which they are historically capable.¹⁰⁶ Rawlsians make their task easy by erasing from their field of concern exactly those problems, i.e. of revolution, repair of past injustice, perhaps heavy handed political socialisation, all of which, on the road to a just society, are likely to be rather too

106. Midtgaard (1998a:8); cp. Daniels (1996:150ff) to whom Midtgaard refers.

107. Habermas (1973; 1981); Held (1980). Not all critical theorists may agree with my definition.

comprehensive to fit the requirements of a wished for political liberalism. In contrast to Rawlsian theory, the republican tradition fills a gap by its constitutive interest in exactly these questions.

However, secondly, also Rawls' own form of stability theory is empirically more questionable than he thinks. There is clearly a place for analytically prescriptive moral theory which is not critical in the sense of critical theory, and which makes a point of abstracting from the present. But although the distinction between problems of transition and problems of stable function is legitimate as far as it goes, there is a tendency for the latter to become self-protecting. Once the formulation of principles of justice has been achieved, the idea of post-transitional conditions easily translates to tautology: anything that is not perfect working justice is simply evidence of the transition not having taken place yet. However, also post-transitional theory, in order to investigate stability counterfactually, must respect empirical evidence. Moreover, the distinction is probably exaggerated in the first place, and this is where the real bite of republican thought lies. The trouble with the transition concept is its implied Enlightenment prejudice that history is progressive, that injustice and unreason are evidence of malfunctioning and somehow incomplete societies and individuals, and that once these problems are rectified, no reversals and no further problems are likely to occur.

Republicanism does not just question whether a Rawlsian system of justice could get off the ground or appear through some just or unjust metamorphosis of existing societies in the first place. It also questions whether, under conditions where institutions and cultural elements which are compatible with political liberalism itself are allowed to do their work over time, such a system of justice would yet be stable. There is no question here of 'adapting' a theory to what is currently feasible in the light of the powers that be, or to this or that notion of the world 'as it is'. But there is a place for at least considering specific causal and factual arguments which point out what, in the light of our best evidence, seems not to be possible. Discussions in this thesis have pointed out a whole range of such arguments.

This is the republican challenge to liberalism. It is empirical, but not *merely* empirical. Maybe not all republican assumptions and arguments hold water. Maybe the point about collective identity is that it is too dangerous to tangle with, and that a working solidarity is more a matter of engineering apathy and making citizens watch more TV. Maybe we should take steps towards dismantling the channels of public deliberation which exist, because of their disruptive effects and because they make political conflicts much too complex, and instead place our faith in elite compromise and wise rulers. Maybe the best civic culture for protecting *libertas* is a subject culture.

I do not think such claims are sound. But if backed by good evidence, they are certainly *kinds* of arguments that would seriously affect the republican view of the world - and do so more than Rawlsian moralism. My point is that contemporary

political theory should leave its armchair positions at least occasionally, to engage reality in the manner of the great classical debates which have been studied in this work. In order to convince it should integrate empirical and causal assumptions already at the outset, and see what this does to the theory. Or rather, it should pay more systematic attention to the assumptions that are there already, seeking to explicate and confront them. To the extent that republican accounts remain persuasive, everything is not as before with liberal political theory. I am not sure of the degree to which I have succeeded myself in explicating all of the republican assumptions, let alone in establishing the soundness of republican arguments. Hopefully at least some of my failures might illuminate a more sustained quest in that direction.

Many of the points of the republican challenge to traditional liberalism are in fact mirrored in contemporary political theory. There is a new concern with political identity, with indeterminate constitutional deliberation, with the importance of civic virtue, and with practices of toleration, all in the context of empirically informed analysis of citizenship. I have been at pains to stress that republicanism was always 'liberal', in the sense of its ultimate value, and also that 'liberal' republicans like Tocqueville and Arendt should inspire us the most. If new departures in liberal political theory are about to blur the field completely by appropriating all of the fragility of liberty argument and thus closing the historical gap, I should be the first to cheer the advent of a new republican liberalism.

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Abstract of the thesis

The thesis examines the republican tradition of political thought which, it argues, can and should be delineated using the metaphor 'the fragility of liberty'. This fragility refers to a constitutive argument about the need for citizens to protect and preserve their common liberty by their joint political activities, including various forms of participation in self-government and exercise of civic virtue. The thesis takes as its starting point the revision of J.G.A. Pocock's civic humanism thesis which has been carried out by Quentin Skinner, Maurizio Viroli and others who support a more instrumentalist account of the republican tradition and who claim the existence of a 'negative' (but collective) conception of liberty for this tradition. The thesis contains a series of short and longer readings of key figures and periods of republican discourse from ancient Greece to Tocqueville, and develops four analytical dimensions of the 'fragility of liberty argument', in particular emphasising the points of difference with 'non-republican' or (proto)liberal conceptions. In the process it also discusses, extends, and reformulates this new 'instrumentalism' in a number of ways, including the way it makes sense at all to employ the difficult notion of a distinct tradition. Among other things it argues (against Skinner) that arguments rather than (only) concepts and discourse is the most fruitful methodological tool; that the mere existence of a law-centered concept of liberty (Phillip Pettit) fails to differentiate republicanism from liberalism; that the contrast to non-republican and in particular various early enlightenment liberal discourses has to be made by reference to a variety of different possible modes of denying or discrediting particular aspects of republican discourse – and that republican arguments were capable of being reformulated inside new conceptual territories, so that for instance the existence of languages of natural rights, commerce, or progress need not spell the death of republicanism. In the conclusion the thesis briefly discusses ways in which the republican tradition may be taken out of the history of ideas to inform, more systematically, contemporary political theory debates as a repository of different arguments, formulated in different historical contexts, about *how* liberty may be fragile. In particular, the question is raised of the significance of republicanism as a more 'empirically' informed style of argument as compared Rawlsian liberalism.

